93-713

CASE NO. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

GARY G. GRAHAM,
Petitioner,

versus

THE FLORIDA SUPREME COURT, and THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE FLORIDA SUPREME COURT

APPENDIX
VOLUME FIVE

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For reasons related to printing logistice, Volume Six may not be printed. If printed the index will be found at the beginning thereto.

DOCUMENT 30

Fourth Amended Motion to Dismiss

Note: Pages 4-38 have not been reproduced here as they are identical to the "Background" statement already reproduced as an excerpt from Judge Graham's Show Cause Response found at (A 564)

BEFORE THE FLORIDA SUPREME COURT

INQUIRY CONCERNING A
JUDGE, NO. 91-415
HONORABLE GARY G. GRAHAM CASE NO. 80,273
CITRUS COUNTY COURT JUDGE
_____/

FOURTH AMENDED

MOTION TO DISMISS

Comes now Gary G. Graham, County Court Judge, and moves the Florida Supreme Court (hereinafter the "Court") to dismiss the Formal Charges and all subsequent amendments thereto filed against him by the Florida Judicial Qualifications Commission (hereinafter the "Commission" or "JQC") in the above styled cause.

Hereinafter Respondent will refer to the Exhibits as (Ex x, P y, L z), meaning see Exhibit x, at Page y, Line z. The Exhibits are contained in 7 volumes labeled "Exhibits to Show Cause Response and Third

Amended Motion to Dismiss" on File with the Florida Supreme Court, Case No. 80,273.

GROUNDS

As grounds for said Motion, Respondent avers that:

1. As to all charges the JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions.

2. As to all charges the Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process.

Rights protected by the State and Federal Constitutions.

3. As to all charges the JQC has violated the State and Federal procedural due process rights of the individual

Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida Judicial Qualifications Commission Rules (hereinafter referred to as "Ground Three").

4. As to all charges the JQC has violated the State and Federal procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and prejudiced against the Respondent participated (hereinafter referred to as "Ground Four").

5. As to charges 1A and 4J, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution (hereinafter referred to as "Ground Five").

6. As to all charges the JQC has violated the State and Federal procedural due process rights of the Respondent by not only refusing to allow him to present evidence or argument on his Eleven Affirmative Defenses (which include among other things the above stated constitutional challenges) but also refused to allow discovery of the facts which would be necessary to support the Respondent's affirmative defenses or the above stated constitutional challenges. It did so by quashing the deposition and trial

subpoenaes of past and current members of the Commission, its office staff, its special and general counsels, its investigator, and numerous other witnesses having information related to these constitutional challenges.

7. As to all charges the JQC is an

unconstitutional body and its rules are an unconstitutional violation of the Respondent's Federal and State due process and free speech rights for the reasons stated in the Respondent's Amended Complaint for Injunction and Declaratory Relief on file in the United States District Court, Middle District of Florida, Case Number 93-137-CIV-T-17B and attached hereto as Exhibit 172.

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AS TO GROUND ONE

As a result of the above stated background, the local Bar, the local press, the local politicians, and the Sheriff do not like him and want his removal.

The attorneys want him out because he won't have secret pretrial conferences, he won't rubberstamp their plea bargains, and he won't tolerate misconduct in Court.

The local press wants him out because

he won't let defendants come to Court drunk, cursing, or lying. He won't let them win all their cases in Small Claims Court and won't fine anyone $350.00 for stealing a 50¢ newspaper.

The local politicians want him out because on two

occasions he has put their children in jail (County Commissioner Skip Hudson's son was sentenced to 30 days in jail when during sentencing he told the Court that it was none of its business who he bought his dope from, and County Commissioner Alex Griffin's daughter was sentenced to jail when she violated probation for willful and wanton reckless driving and refused to offer any reason for her violation).

Circuit Judge Thurman wants him out because he won't let him exercise illegal jurisdiction over misdemeanor jail sentences

or be vulgar in Court.

Circuit Judge Edwards wants him out because he won't let him forget his part in the Dameron debacle, won't let him build million dollar Court facilities without the public's knowledge, and won't excuse his friends from jury duty.

Sheriff Dean wants him out because he won't let criminals out of jail to solve his jail under spacing problems, won't let him build million dollar Court facilities without the public's knowledge, and won't let him release defendants from jail because they have friends in the Sheriff's Department.

State Attorney King wants him out because he won't let him be rude in Court or lax in the filing of informations, he will not let 6th-time DUI defendants be prosecuted in misdemeanor Court without some explanation, and he helped defeat his

buddy Oldham in the 1984 election.

The newspapers in particular have placed Respondent

under a hostile, twisted, warped, and microscopic examination including numerous vicious editorials based on one side of the story, and calling on many occasions for the JQC to remove him (See composite Ex 107).

The people of Citrus County overwhelmingly reelected him despite the united opposition of the aforementioned groups and want him to stay (See composite Ex 108A, pre-complaint letters of support, composite Ex 108B, post-complaint letters of support and composite Ex 108C post-complaint demonstrations of support).

The JQC has filed a Notice of Formal Charges alleging some 31 acts of misconduct, including everything from false allegations

of ex parte communications (See Ex 109, charge 6B) to stating in open Court that "You cannot separate morality from the law!" (See Ex 109, Charge 2D).

The Respondent Judge received an initial Notice of Investigation on April 28, 1992 (See Ex 110). He was "invited" to appear before the JQC on May 18, 1992, to explain eight charges of misconduct (See Ex 110, P 5), giving Respondent just three weeks to prepare for the meeting. Some of these charges related back to incidents some <u>three</u> years in the past and required research into Court files and the difficult transcription of electronic court reporting tapes. Respondent was expected to do this while carrying on all of his full-time duties as the sole County Court Judge for Citrus County (See Ex 106, P 11,

L 16).

Attorney Richard Earle, Jr., on behalf of the Respondent, in a special limited appearance, requested a continuance from Attorney Roy Rhodes, Counsel for the Commission. Mr. Earle, a former Chairman of the JQC, had advised Respondent that such motions were routinely granted. The JQC denied the motion (See Ex 111).

Respondent traveled from Inverness, Florida, to West Palm Beach on May 18, 1992, to renew his motion for a continuance (See Ex 106, P 5). The Motion was then granted, but only for the reason that the Commission wanted additional time to charge the Respondent with additional misconduct (See Ex 106, P 18, L 70). Respondent's hearing was continued to July 31, 1992.

On May 27, 1992, Respondent requested that the JQC schedule approximately six hours for the hearing scheduled for July 31, 1992 (See Ex 112).

On June 29, 1992, Respondent received an Amended Notice of Investigation (See Ex 113). At that point the Respodent

had only 32 days to complete his preparation on the original eight charges and to begin preparation on 25 additional charges some of which related back to incidents four years in the past and which also required the difficult transcription of electronic court reporting tapes.

On the same day, Respondent received a letter advising him instead of having 6 hours to explain or refute 8 charges, he would have 3 hours to explain or refute the amended charges. Thus, if Respondent talked non-stop without interruption or questioning, he was allowed 5.6 minutes to explain or refute each of the charges.

Furthermore, when Respondent appeared at the purported Rule 6(b) hearing, he was

quickly admonished not to waste any time on preliminaries lest he might cut into his allotted time (See Ex 115, P 9, L 19).

During the hearing Respondent was not allowed to bring an assistant into the room (Ex 115, P 6, L 13), and was not allowed time to prepare a seating diagram (Ex 115, P 9, L 19), thus being forced to listen and prepare the diagram at the same time (Ex 115, P 11, L 2).

Respondent was told how he was going to make his presentation (Ex 115, P 11, L 5) to which the Respondent objected (Ex 115, P 11, L 19).

Given the stated background surrounding Respondent's charges, Respondent was very concerned that individuals from the press might be members of the JQC. This concern was the result of a former member of the JQC advising Respondent

that when the JQC was first created that an informal agreement was made that the press would always be represented. This deal was supposedly made to alleviate objections by the press at the time the JQC was created that the meetings prior to formal charges would be secret.

The JQC would not introduce the profession of two of its members, Mahon and Tate, even though it made known the profession of every other member of the Commission (Ex 115, P 12, L 14 thru L 16). Nor would the JQC answer the direct question if there was anyone on the Commission who had experience in the newspaper business (Ex 115, P 13, L 16).

Subsequently the Executive Director of the JQC provided the newspapers and the President of the Citrus County Bar Association with this information thus clearly demonstrating its sensitivity to

the pressure from the press and the Bar (See Ex 137 and 138).

Considering the background of unfair, hostile news coverage, Respondent was also concerned that members of the Commission might have been prejudiced against Respondent either through personal contact from representatives of the press (perhaps including press representatives who are members of the Commission) or by exposure to the numerous unfair and twisted news articles and editorials written about him.

The JQC refused to answer questions regarding these concerns (Ex 115, P 13, L 16 thru P 14, L 24 and P 20, L 17). Respondent later obtained proof that indeed this had

occurred (See Ex 132).

Considering the background of the legal community where a Florida Supreme Court

Justice got directly involved in filing an ethical complaint at the secret request of someone who appears from the record to be another judge, Respondent was concerned that another judge, possibly a Supreme Court Justice, might have prejudiced members of the Commision (Ex 43).

The JQC refused to answer questions regarding these concerns (Ex 115, P 14, L 25 thru P 15, L 5 and P 20, L17).

Considering the background of petty, vindictive politics experienced by Respondent at the hand of the Sheriff, the State Attorney, and the Circuit Judges, Thurman and Edwards, Respondent was concerned that these individuals or other politicians might have prejudiced the Commission against the Respondent.

The JQC refused to answer questions regarding these concerns (Ex 115, P 15, L 6 and P 20, L 17).

Subsequently, a politician, Mr. Andy Martin, seeking election to the 5th Congressional District admitted to complaining to the JQC **based solely on newspaper articles he had read** (Ex 116).

Respondent has also verified that two of the complaints resulting in formal charges were filed by Brad King (See Ex 135 and 136), a bitter political enemy who had come to the judge's office and as the State Attorney, threatened to wage a "war" against the Respondent.

Respondent then proceeded to proffer a series of

questions consistent with the typical questions used to voir dire a jury to obtain impartial triers of fact. The JQC refused to answer these questions (Ex 115, P 15, L 19 thru P 19, L 2, and P 20, L 17).

One particular concern of the

Respondent, considering the fact that he has been charged with being too tough on a contemnor (Ex 109, charge 2J) was that someone on the Commission might have a grudge against too-tough judges (Ex 115, P 18, L 15). Subsequently, Respondent learned that investigative counsel for the JQC, Mr. Terrance Bostic, has recently been sentenced to jail for Contempt of Court (Ex 117).

Considering the nature of charges against Respondent involving his publicly stated purpose of removing the politics, favoritism, and friendship he perceived in the Court system, especially with respect to attorneys and influential people, Respondent is especially concerned about being tried by attorneys, judges, and other influential people, some of whom may have received favored treatment as a result of their status.

The JQC refused to answer questions regarding these concerns (Ex 115, P 19, L3 thru 17, and P 20, L 17).

Respondent made and preserved his substantive and procedural due process arguments for the record (Ex 20,

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P 20, L 19 thru P 28, L 13).

Later in the hearing one of the Commissioners responded to these objections (Ex 115, P 42, L 2). The Commission would not allow the Respondent to fully reply on the record (Ex 115, P 44, L 6).

For reasons unknown to the Respondent, two Commissioners have been replaced after voluntarily recusing themselves for prejudice under Rule 26 of the Florida Judicial Qualifications Commission Rules (Ex 118 and 119). Commissioner Frank, however, appears to have been very active in digging up information on the Respondent Judge and

seems to have been especially troubled by Respondent's pending Federal lawsuit (See Ex 139). The rules of the JQC allow these admittedly prejudiced Commissioners to participate in the selection of their replacements.

Finally, at the end of the hearing Respondent advised the Commission that Sheriff Dean had made public the investigation of Respondent which under Rule 24 of the FJQCR was supposed to be confidential. Respondent asked the JQC for permission to respond. Instead of giving Respondent a simple yes or no answer, the JQC refused to answer (Ex 115, P 53 thru P 56, L 8).

The JQC has not sanctioned Sheriff Dean for the disclosure of these confidential proceedings.

Subsequent to this Rule 6(B) hearing the Respondent appeared on a local television

program and disclosed the possibility of charges being filed against him generally

defended himself, and requested help in the form of information related to his defense.

The JQC then added an additional 14 charges to its complaint including a charge that the Respondent's speech on the television program was unethical.

Based on the written complaints discovered during deposition, it is clear that the Florida JQC had years to consider the charges made against Respondent.

At least two attorneys and one investigator were provided headquarters at the Citrus County Sheriff's office and conducted investigations, gathered evidence, and prepared the case against Respondent.

In addition to the General Counsel for the Florida JQC, Mr. Roy T. Rhodes,

the two Special Counsels, Mr. Terrance A. Bostic and Ms. Alicia J. Schumacher, and their investigator, Mr. Stan Jacobson, the Florida JQC has employed attorneys in Miami, Florida, and Jacksonville, Florida.

The Florida JQC proceedings have forced Respondent into debt and that he does not have the means to match the State provided financial resources being used against him nor to hire an equivalent team of lawyers to prepare his defense.

During the depositions taken since the close of the pleadings on December 30, 1992, the deponents have refused to answer numerous critical questions. Furthermore, two critical deponents terminated their depositions without leave of Respondent or the deposition hearing officer.

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Just prior to Respondent's hearing he discovered many facts related to his

defense which demanded additional discovery to perfect and he discovered a critical expert witness that he was theretofore unaware of and that he needed to develop and prepare for the hearing. The JQC refused Respondent a continuance.

Despite Respondent's best efforts numerous critical witness subpoenas remained unserved, prior to the hearing.

Despite his best efforts Respondent was unprepared for trial and was not able to make a good and proper defense when forced to a hearing on January 26, 1993, jsut 27 days after the close of the pleadings in what was then a 43 count accusation.

Respondent needed at least 120 additional days to prepare for the hearing. He shared this with the JQC, but was denied relief and forced to trial unprepared.

Respondent was disorganized, unprepared, and unable to make a good and proper defense

for the reasons previously stated.

The Florida JQC kept Respondent before it nine and ten hours per day for four days in January and four additional days in February 1993.

On one day the Respondent was only allowed twenty minutes for a lunch break.

The city police department notified the Respondent during the Florida JQC hearing that his vehicle had been burglarized and vandalized and requested that he respond to

the scene to secure his property and provide information. The Florida JQC refused to grant the Respondent a recess and proceeded with the taking of evidence in the absence of the Respondent as he responded to this emergency.

The Florida JQC twice charged the Respondent with contempt and threatened

that he would be put in jail:

a. Once for trying to clarify a question regarding permission to photograph a sleeping Commissioner, and

b. Once for taking too long to write a note concerning the Commission's refusal to allow a proffer.

The contempt proceedings were never had, the Respondent was never given an opportunity to defend himself and yet the JQC included in its Findings of Fact, Conclusions of Law and Recommendation for Removal that the Respondent was "contemptuous" during the hearings. (Page 23 of the Findings)

The prosecution rested its case on January 29, 1993. The Florida JQC dismissed 19 of the 41 allegations of misconduct substantiating Respondent's position that the charges were false, trivial and misdirected.

Nonetheless, the Respondent was required to waste his time and financial resources on the anticipated defense of these 19 unfounded and abandoned charges which further impeded his ability to prepare for the defense of those remaining.

At the close of the Florida JQC case, Respondent advised the Florida JQC that he would need 120 days from

January 29, 1993, to be prepared for his trial defense.

On January 29, 1993, the Florida JQC ignored the Respondent's request for 120 days and continued the case until February 23, 1993.

The Florida JQC further ordered the Respondent to have a complete list of witnesses and pre-marked exhibits available by February 12, 1993, with the extra sanction that any witness or exhibit not listed would

be excluded from admission into evidence.

Despite the short time provided, the Respondent delivered to Special Counsel for the Florida JQC a list of 473 witnesses and allowed him to inspect 551 marked and catalogued exhibits. This list of witnesses and exhibits was incomplete and Respondent was unable to call other important witnesses and present other important documents and tangible evidence.

Respondent remained in a state of unpreparedness to begin his defense on February 23, 1993, including but not limited to the fact that numerous critical witnesses remained unserved. Respondent feared that his state of unpreparedness would further delay him during the hearing and that he would be further held in contempt and jailed.

Subsequent to the close of the prosecution's case, the Respondent filed yet another Motion for Continuance directed

to the February 23, 1993, hearing date sharing the above stated concerns. It was denied.

Respondent advised the Florida JQC that the hearing of

his defense would require approxiamtely six months. The Florida JQC issued an order stating that "Four days have been requested for the conclusion of this hearing." At the beginning of the Respondent's case the Commission gave the direct order that "We are starting today and we are going to complete this hearing by Friday." (T, P 1473, L 6)

Respondent attempted to proffer an objection based on the Decisional Authority of U.S. vs. MacLain 701 F. Supp 1544, but the JQC would not allow his proffer. (T, P 1476, L 25)

Subsequent to January 29, 1993, the

Florida JQC had refused to execute trial subpoenas. Also subsequent to January 29, 1993, the Florida JQC had refused to accept witness pay deposits which are required by Florida Statute 92.151.

Respondent sought relief from the Florida Supreme Court and was denied. (Florida Supreme Court case number 80,708, requested relief item one.)

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Subsequent to January 29, 1993, and prior to the resumption of the Florida JQC hearing related to the Respondent that the Respondent attempted the deposition of William F. Edwards, a critical witness in his case.

The deponent was rude, insulting, and uncooperative and refused with minor exceptions to answer the questions propounded to him.

The Respondent moved the Florida

Judicial Qualifications Commission to compel discovery but the motion was denied.

Without the deposition of this witness the Respondent was not only unable to defend himself but was unable to preserve a record on appeal for his claim that he is being selectively prosecuted for exercising his first amendment rights to freedom of speech.

During the hearings held in Inverness, Florida between January 29, 1993 and February 26, 1993 to consider various untrue allegations of unethical conduct filed against the Respondent by the JQC the JQC would not allow evidence or testimony related to the Plaintiff's affirmative defenses.

The affirmative defenses were as follows:

FIRST AFFIRMATIVE DEFENSE

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State

and Federal Constitutions and therefore lacks jurisdiction to proceed against the Respondent Judge.

SECOND AFFIRMATIVE DEFENSE

The Florida Code of Judical Conduct is so vague that a

reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the State and Federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

THIRD AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal procedural due process rights of the individual Respondent by failing to provide a hearing as required by Rule 6(b) of the Florida JQC Rules and thereby lacks jurisdiction to hear the issues involved at a final hearing.

FOURTH AFFIRMATIVE DEFENSE

The JQC has violated the State and Federal Procedural due process rights of Respondent by being composed of individuals with inherently adverse interest subjecting them to bias and by conducting closed non-adversary ex parte hearings wherein two members who were admittedly biased and prejudiced against the Respondent participated and therefore lacks jurisdiction to proceed against the Respondent Judge.

FIFTH AFFIRMATIVE DEFENSE

As to Charge 1, the speech alleged in the Notice of Formal Charges is absolutely protected by the First Amendment of the United States Constitution and Article One, Section Four, of the Florida State Constitution.

SIXTH AFFIRMATIVE DEFENSE

As to all charges occurring before the Respondent Judge's current term of

office, the JQC lacks jurisdiction for the reason that these widely publicized incidents

occurred years ago during the Respondent's first term of office. Turner v. Earle, 295 So.2d 609 (Fla. 1974).

SEVENTH AFFIRMATIVE DEFENSE

As to charges 6A, 6B, and 6C, the JQC does not have subject matter jurisdiction over the conduct alleged in the Notice of Formal Charges for the reason that on their face they are not "ex parte" or alternatively are not prohibited ex parte communications.

EIGHTH AFFIRMATIVE DEFENSE

The charges against the Respondent Judge do not logically fall within the category of habitual judicial intemperance or unbecoming judicial conduct as contemplated in Section 17(a)(3), Article V, Florida State Constitution. The conduct did not decend into rancorous personality

or verbal impropriety and represents a mares nest of trivial charges designed to vent the spleen of disappointed litigants and special groups with an axe to grind. Accordingly, the JQC is without subject matter jurisdiction.

NINTH AFFIRMATIVE DEFENSE

With respect to all charges occurring during the Respondent Judge's first term of office, the JQC has known the substance of these charges for years and delayed complaining of them until the evidence was old and cold and witnesses disappeared or died. The Respondent Judge is accordingly unable to defend himself and the Commission with respect to said charges and is estopped from proceeding by the theory of estoppel and latches.

TENTH AFFIRMATIVE DEFENSE

The prosecution of the Respondent Judge

with regard to the trivial matters contained in the Notice of Formal Charges is an impermissible selective prosecution obtained through political pressure put upon the Commission in the form of exposure to misleading adverse and critical newspaper editorials and threats of legal action against it.

ELEVENTH AFFIRMATIVE DEFENSE

The Notice of Formal Charges fails to allege facts sufficient to establish its jurisdiction over the subject matter or person of the Respondent Judge. Specifically, it fails to allege at the time of the alleged misconduct or at any other time that the Respondent was duly elected, qualified and acting County Court Judge in the State of Florida.

Due to these adverse rulings by the JQC, including a last minute ruling at trial that they would not be considered whatsoever,

the Respondent could not call his witnesses related to these affirmative defenses. The excluded witnesses included, but were not limited to:

1. Judge William F. Edwards, Circuit Judge
   Fifth Judicial Circuit of Florida

2. Judge John P. Thurman, Circuit Judge
   Fifth Judicial Circuit of Florida

3. Judge William T. Swigert, Circuit Judge
   Fifth Judical Circuit of Florida

4. Judge Woodrow O. Beauchamp, County Court Judge

   Levy County, Florida

5. Raymond Ehrlich, Former Chief Justice
   Florida Supreme Court

6. Harry Lee Coe, State Attorney and former Circuit Court Judge
   Thirteenth Judicial Circuit of Florida

7. Judge Harvey Goldstein, County Court Judge
   Dade County, Florida

8. Past and present members of the JQC, its employees, its Executive Director, its Special and General Counsels and numerous other witnesses related to Respondent's Affirmative Defenses.

Judge Edwards refused to answer numerous questions propounded to him during his deposition on February 11, 1993.

The JQC denied Respondent's Emergency Motion to Compel Judge Edwards to answer the questions refused at his deposition.

Judge Thurman also refused to answer numerous questions propounded to him during his deposition on January 18, 1993.

But for the above stated adverse evidentiary rulings and refusals to answer the Respondent had intended and would have proceeded to prove the following:

1) For several years Judge Edwards drove a red pick-up truck in and about Citrus County and routinely parked it in his official parking space at the Citrus County Courthouse conspicuously designated "W.F. Edwards, Circuit Court Judge."

2) Edwards' truck had a license plate attached to the

front bumper inscribed with the

slogan "Registered Coon Ass."

3) The plate also displayed the picture of a raccoon with its tail raised exposing a graphically detailed brown anus and black sphincter.

4) Citizens of Citrus County had seen the tag, knew who it belonged to and strenuously objected to it.

5) Judge Edwards presided over a civil case between former baseball player Ted Williams and one of his business partners named Vincent Antanucci.

6) During a case management conference in that case Edwards made a statement to Antanucci that "there'll always be people like you around, but let's face it there's only one Ted Williams."

7) Based on this statement and others made by Edwards at the proceedings Antanucci's attorney, George Evans, filed a motion to disqualify Judge Edwards.

8) Based on the Motion to Disqualify, Edwards charged Evans with direct criminal contempt of court, found him guilty and sentenced him to six months in County Jail.

9) The judgment and sentence of George Evans was reversed on appeal.

10) Judge Thurman routinely presided

over official circuit court proceedings in a plaid shirt, no robe, and sometimes without even a tie.

11) Judge Thurman has referred to defendants in open

court as "sport" and on one occasion told an assistant state attorney that his case was "chickenshit."

12) Judge Thurman without jurisdiction and ex-parte released inmate Ray Bruce Riggs from the Citrus County Jail. Riggs was later reincarcerated.

13) Judge Thurman without jurisdiction wrongfully released inmate Michael Mitchell from the Citrus County Jail. The release of Mitchell was subsequently reversed by Judge Raymond T. MacNeal and Mitchell was re-incarcerated.

During the depositions of former Justice Ehrlich, former Circuit Judge Coe and Judge Swigert hypotheticals based on the actual conduct of Judges Edwards and Thurman as set forth in paragraphs 1 through 13 were presented to the deponents for their consideration.

The conduct as hypothetically presented was considered to be unethical in the opinion of these deponents.

In particular the conduct of judge Edwards (presented to Judge Swigert using different names for the individuals involved) was described by Swigert as unethical, proof that the judge involved was unfit to be a judge and that it bordered on criminal conduct. (Deposition of Judge Swigert pages 264 through 270.)

The misconduct of Edwards and Thurman has been reported to the JQC, either directly through the pleadings of the Respondent, by written complaint of citizens of Citrus County

or by disclosure to counsel representing the JQC.

But for the adverse evidentiary rulings of the JQC the Respondent had intended and

would have also proved the following:

1. Judge Swigert engaged in a ex parte communication with Justice Raymond Ehrlich concerning alleged unethical conduct on the part of Attorney Charles Horn.

2. Judge Swigert removed the Plaintiff from his criminal court duties based on false and unsubstantiated hearsay and letters containing false, misleading and scandalous statements. He did so without due regard to the status of the Respondent as an elected public official and without exercising due care in substantiating the facts upon which his decision was based.

3. As a result of Swigert's grossly negligent conduct as described in numbers 1 and 2 the people of Citrus County have been deprived of the services of their duly elected County Court Judge and the Citrus County Court has been thrown into a state of disorganization and disarray.

The misconduct of Judge Swigert has been reported to the JQC directly through the pleadings of the Plaintiff and by written complaint of a citizen of Citrus County. His misconduct has also been disclosed to counsel for the JQC.

But for the adverse evidentiary rulings of the JQC the

Respondent intended to call Judge Beauchamp and Judge Goldstein and would have proved by their testimony the following:

1. Judge Beauchamp has admitted to performing weddings in his office at the Courthouse during working hours and has accepted gratuities for these services.

2. The Committee on standards of Conduct Governing Judges published a written opinion that such conduct is unethical. (See Exhibit D attached)

The misconduct of Judge Beauchamp has been disclosed to counsel for the JQC.

But for the adverse evidentiary rulings of the JQC the Plaintiff had intended and would have proved that despite the fact that the egregious unethical misconduct of Judges Edwards, Thurman, Swigert, Ehrlich and Beauchamp have been reported to the JQC that formal charges have not been filed

against them. The Respondent would have argued that they have not been charged because they have not upset attorneys, politicians or newspapers by speaking out against wrongful conduct in the Citrus County justice system. (See transcript of opening statement made to the JQC by Respondent prior to the JQC's ruling that it would not allow affirmative defenses, Exhibit I attached.)

But for the adverse evidentiary rulings by the JQC the Respondent intended to call approximately 100 other judges to testify in the same manner as deponents Swigert, Coe,

Beauchamp and Ehrlich.

Judge Harvey Goldstein has been a member of the Ethics Committee for approximately 10 years.

Goldstein failed to appear for his

deposition scheduled for January 19, 1993. At the time of his non-attendance the subpoenae for his deposition had been served, had not been quashed, and was legally binding.

The JQC quashed the subpoenae duces tecum for trial, served upon Goldstein.

The Ethic's Committee had rendered official opinions to the Respondent in which the committee members have been split as to the propriety of the conduct propounded to them by the Plaintiff.

But for the adverse evidentiary rulings by the JQC, and the non-appearance of Goldstein at his deposition, the Respondent had intended to call Goldstein and would have proven the following:

1. That indecisive and split decisions regarding the Florida Code of Judicial Conduct were common and that there was often uncertainty and disagreement among the committee experts as to the meaning of the code.

2. That there are actions currently in progress to either substantially change or replace the Florida Code of Judicial Conduct with a more definitive and understandable code.

But for the adverse evidentiary rulings of the JQC the

Respondent intended and would have proven that the Florida Code of Judicial Conduct is so vague that most judges do not understand it.

Based on the deposition of former Chief Justice Raymond Ehrlich Respondent had a good faith belief that a communication regarding Respondent may have occured between Judge Swigert, Judge Edwards, Spike Fitzpatrick or some other individual unfavorably disposed against the Respondent and a justice of the Florida Supreme Court. This was based on his admission that just such a communication had occured regarding the ethical complaint filed against Attorney

Charles Horn in the Fifth Judicial Circuit.

But for the adverse evidentiary rulings by the JQC Respondent would have attempted to prove that this conduct occurred with respect to other accused judges as well and that it violated the due process and free speech provisions of the Federal and State Constitutions.

But for the adverse evidentiary rulings by the JQC the Respondent would have attempted to discover and disclose that a Justice of the Florida Supreme Court contacted the JQC and encouraged prosecution of Judge Graham explaining the cavalier attitude with which it has proceeded against him.

During the hearing the JQC denied the Respondent the opportunity to call 250 witnesses to refute allegations that he had demonstrated a pattern of rude and arrogant conduct. These included jurors,

witnesses, victims, police officers and other citizens of the county. The Commission arbitrarily

limited the Respondent to 3 character witnesses. At previous hearings as many as 49 character witnesses had been allowed In re Kelley (238 So2d 565, 578 (Fla. 1970)

The Commission then found the Respondent guilty of a pattern of misconduct based on the testimony of its own 6 witnesses all of which were shown to have a bias against Respondent.

The Commission also excluded forty witnesses who would have testified to the politics and favoritism in the Citrus County justice system and eighteen witnesses to testify to attorney misdeeds. It then found the Respondent guilty of falsely stating that politics and favoritism existed and that he had improperly admonished attorneys.

During the proceedings various Commissioners read newspapers, studied personal calendars, giggled, talked, audibly yawned, slept, and laughed at the Respondent. The Commission refused to allow approximately 10 citizens who had watched the proceedings to testify and verify this conduct.

The Respondent has a videotape verifying some of this conduct.

The Commission further excluded approximately 600 items of documentary evidence and approximately 200 video tapes. This evidence was excluded because the Commission had pre-ordained that the Respondent's case would last no more than 4 days.

Due to the adverse procedural and evidentiary rulings the Respondent was unable to preserve a factual record for

appeal either to this Court or the U.S.

Supreme Court.

During the proceedings the JQC Chairman allowed the testimony of witnesses who had violated the rules of sequestion, he berated, ridiculed and insulted the Respondent accusing him of misconduct and criminal contempt. He did so in the presence of the Commissioners, the jury in the case.

During the proceedings the Commissioners who were the jurors commented on the evidence and cross examined the Respondent's witnesses.

The Commission also allowed the Sheriff to physically push Respondent's assistant off an elevator and its General Counsel to shove the Respondent during the proceedings in full view of the Commission and the public.

It also ordered the Respondent to make proffers of law and argument to an empty courtroom.

Furthermore there were literally dozens of motions filed in this case by witnesses, the Commission and the Respondent. These motions were uniformly decided by the Commission without notice to the Respondent, without a hearing and without an opportunity to argue either the merits of the facts or the law. In one particular incident the Chairman informed the Respondent that he had won his motion prior to informing him that he had filed it!

> "Procedural due process, that is, the element of the due process provisions of the Fifth and Fourteenth Amendments which relates to the requisite characteristics of proceedings seeking to effect a deprivation of life, liberty, or property, may be described as

> follows: one whom it is sought to deprive of such rights must be informed of this fact (that is, he must be given notice of the proceedings against him); he must be given an opportunity to defend himself (that is, a hearing); and the proceedings looking toward the deprivation must be essentially fair."

In re Kelley at page 571

Furthermore, during the hearings the Commission made two rulings regarding the issues of the Respondent exercising the constitutional protection of the 5th Amendment and his hearing room conduct during the proceedings.

The Commission ruled that Respondent's conduct would not be considered:

Any similarity between the hearing that was provided the Respondent and an "Essentially fair" proceedings was purely coincidental.

> THE CHAIRMAN: No. The Chair is going to stand by his ruling. His conduct as -- whatever occurred in this courtroom other than as testimony and/or evidence will not be considered by the Commission. Please proceed.
> (T, P7, L5 of closing)

The Commission also ruled that the Respondent's exercise of his 5th Amendment Rights would not be considered.

JUDGE GRAHAM: Mr. Bostic keeps saying over and over again, "Well, why doesn't the judge just take the witness stand and tell his side of the story?" You don't how much I'd like to do that. I would love to do that. But it's not my burden,

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first of all, and it's improper for him to say that it's my burden to disprove the charges.
THE CHAIRMAN: Judge -----
JUDGE GRAHAM: It's his burden -----
THE CHAIRMAN: Judge, excuse me. That's not an argument. Whether or not you take the -----
JUDGE GRAHAM: But he's making it an argument.
THE CHAIRMAN: But, I mean, I'm not paying attention to that. You have the right to go on the stand or not. I mean -- and if you don't go on the stand or not. I mean -- and if you don't go on it, it is not going to make one little difference to us, so let's move on.

(T P101, L15 of Pretrial Hearing)

Despite these trial rulings the Commission in its official Findings reported to the Florida Supreme Court stated the following:

"Respondent refused to testify in his own case . . . . ."

(Findings at Page 23)

It further stated:

"His actions, attitude, and activities during the hearing were often disruptive, scandalous, improper and contemptuous."

(Findings at Page 23)

Furthermore the Commission in its Reply to Response to Order to Show Cause dedicated over seven pages of its pleading to criticizing Respondent's hearing conduct including once again the Respondent's invocation of the protection of the 5th Amendment which he invoked due to threat of filing perjury charges made by the State Attorney an admitted long time bitter political enemy of the Respondent who had once before falsely accused the Respondent of a crime. (See Background)

- Page 68 -

It is the Respondent's position that the JQC as it is currently authorized under

Florida Law and Procedure is incapable of providing him a fundamentally fair hearing, that because of the fundamental unfairness of the procedure his **evidence will not be admitted**, and that his **testimony will not be believed**.

Accordingly, the charges against him should be dismissed until such time as the State of Florida can provide procedural due process to the Respondent.

AS TO GROUND TWO

The JQC has formally charged the Respondent with 31 acts of misconduct (see Ex 109). Among other things the Respondent is charged with:

1. Stating that some attorneys were acting like children (Charge 1A).

2. Admonishing an attorney for abandoning a client on appeal (Charge 3A).

3. Requiring as a condition of probation that a drug defendant provide substantial assistance to law enforcement (Charge 2A).

4. Refusing to allow a defendant while on probation to live with his girlfriend, the victim of his crime (Charge 4C).

5. Stating that "You cannot separate morality from the law" (Charge 4C).

6. Admonishing a defendant not to repeat the conduct which got him in trouble (Charge 2G).

7. Requiring a drunk driver to obtain a bicycle for transportation while on probation (Charge 2H).

8. Requiring a woman charged with not getting her child to school to obtain a bicycle for herself and her child (Charge 2I).

9. Refusing to participate in a probation administration meeting in the presence of a news reporter (Charge 5A).

As to Item 1, Warren Burger, Chief Justice of the United States Supreme Court, stated in a Tulsa Law Review article that:

> Montaigne said, long ago, that an advocate is sometimes well advised to state his final proposition first. My final proposition can be roughly stated as follows: (1) the legal profession as a whole has a very poor standing; (2) there are many causes for this; some of them are the

incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and (3) there is something we can and ought to do about this as the English bar and bench did a century ago.

I find no pleasure in saying to you that the majority of lawyers who appear in court are so poorly trained that they are not properly performing their job, and that their manners, professional performance, and ethics offend a great many people. Those who do not accept these harsh premises will not accept the proposal I intend to make.

On the most favorable view expressed, seventy-five percent of the lawyers appearing in the courtroom were deficient by reason of poor preparation, inability to frame questions properly, lack of ability to present expert testimony, lack of ability in the handling and presentation of documents and letters, lack of ability to frame objections adequately, lack of basic analytic ability in the framing of issues and lack of ability to make an adequate argument to a jury. Also very high on the list of deficiencies was the lack of an understanding of basic courtroom manners and etiquette, and a seeming unawareness of many of the fundamental ethics of the profession. Most top level members of the trial bar - all of you, I am sure had an apprenticeship or internship, however informal, under the guidance of experienced trial lawyers. We need not worry about you.

> Our problem is caused by the lawyers who occasionally and casually try a case but have never had proper
>
> - Page 70 -
>
> training in the fundamentals. These are the men who take five days to do what you would do in one day. These are the men who make trial judges cringe and sigh when they walk into the courtroom; the trial judge knows how such lawyers can convert the trial process into a shamble.
>
> The first and larger part of the defect is lack of adaptability and lack of adequate technical and practical training. The second category has to do with manners and ethics. Some of the studies made in recent years in the effort to understand the jury function give strong support to the observations of judges and lawyers. The things jurors seem to find offensive are the bad manners of lawyers who abuse witnesses, lawyers who snarl at each other across the counsel table, lawyerswho are discourteous or slovenly in the communications with the judge and the jury. (See Ex 120, P 1, 3, and 4.)

After some analysis, Justice Burger concluded that <u>too few trial judges exercise proper control of their own courtrooms</u> (See Ex 120, P 8).

United States Supreme Court Justice

Anthony Kennedy, commenting on the Bar in a speech to the American Bar Association in 1990, stated that, "We see shoddy practice in every court in the country, including the Supreme Court of the United States." (See Ex 121)

Respondent is charged, without quotation and without context, with stating that some attorneys were acting like children. In light of the more severe criticisms of our past and present Supreme Court Justices a reasonable person would not be put on notice that the alleged statements were proscribed.

As to Item 2, the Federal Courts have been so offended

by attorneys abandoning their clients on appeal that they recently amended the Federal Rules of Criminal Procedure to require them to remain on their cases unless excused

by the Court (See Ex 122 and 123).

The Oath of Admission to practice law in Florida requires each attorney to swear under oath that he ". . . will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice . . ." (See Ex 124).

As to Items 3 through 9, they are either such fundamentally widespread practices, such as substantial assistance, or are of such a well-founded and appropriate nature that a reasonable person would not be put on notice that the sentences imposed would be proscribed.

Furthermore, Respondent is charged with stating that an Assistant Public Defender falsified a record on appeal (<u>which she did</u>). Respondent had for several years tried to end the use of electronic reporting in County Court which was the principle

reason for the conflict forming the basis of this charge. (The Defense Attorney's secretary transcribed an electronic recording, the Defense Attorney approved it, it was false, when notified of the problem the Defense Attorney attempted to prevent the record from being corrected.)

Having tried several ways to end this practice, Respondent was considering filing a lawsuit with the Florida

Supreme Court. Fearing charges of unethical conduct, but uncertain because of the vagueness of the Florida Code of Judicial Conduct, Respondent wrote to the Committee on Standards of Conduct Governing Judges, a Committee of Judges who are experts in judicial ethics (Ex 125).

Three of the experts said that Respondent would be unethical not to file a lawsuit. Three said he would be unethical

if he did. Four said they didn't want to answer! (Ex 126)

On another occasion, the same Committee advised the Respondent that he could speak on behalf of establishing a Children's Services Council in Citrus County. The Committee advised Respondent he could do so as long as he did <u>not become active in the fund raising aspect of the venture</u> (Ex 127 and 128).

Children's Services Councils as authorized by Florida Law do not participate in "fund raising". They are a taxing body of local government. It is impossible to speak on behalf of the establishment of a taxing body without talking about money, taxes, and what they will be used for. Respondent, who had been working hard toward this worthwhile goal, stopped all participation because of the Committee's vague and irrational opinion.

Evidently a Chief Judge of the First District Court of Appeal was confused by the Florida Code of Judicial Conduct on a similar issue. On page two of the Committee's response

- Page 73 -

half of the **experts** told him it was ethical to sit on a bond committee and the other half said it would be unethical (Ex 129).

When Respondent first took office he asked the Committee on Standards of Conduct Governing Judges if as the only County Judge in Citrus County he could rent office space to the Public Defender's office.

Seven **experts** said it would be unethical. Two said it would not (Ex 130).

If the experts can't agree on what the Florida Code of Judicial Conduct means, how then can the Judges of the State be guided by it? Obviously, it is so vague as written and applied as to violate the

substantive due process rights protected by the State and Federal Constitutions.

AS TO GROUND THREE

The Respondent incorporates by reference the factual circumstances outlined in Ground One above.

In summary, the Respondent had 32 days to prepare for 25 additional charges of misconduct involving events some of which related back to incidents four years in the past. He was also limited to 5.6 minutes per charge to explain 32 separate and complicated charges.

Respondent objected to the above stated facts and circumstances and refused to participate in what was an obviously superficial and unreasonable "opportunity" (Ex 115, P 39, L 10).

The JQC is required, by its own rules, to afford a Respondent Judge a **reasonable**

opportunity to make a statement before the Commission to explain, refute, or admit the conduct under investigation (FJQCR 6b). The JQC having failed to provide a reasonable opportunity as required by its own Rules thus violated the procedural due process rights of the Respondent and cannot proceed with formal charges unless and until it complies with its own Rules. Having failed to abide by its own Rules, the JQC denied Respondent his procedural due process rights protected by both the State and Federal Constitution.

AS TO GROUND FOUR

The JQC has formally charged the Respondent with 31 acts of misconduct. The Commission on at least two occasions met to consider Respondent's case. Present at both hearings was Commissioner Freeman (Ex 106, P 1 and 115, P1) and at one hearing Commissioner Frank (Ex 106, P 1). It is

a reasonable assumption that during the May 18 meeting and subsequent to the July 31 meeting the Commission discussed in secret and ex parte the Respondent's case (Ex 106, P 18, L 7 and Ex 109, P 1). It is reasonable under the FJQC Rules to believe that prior secret and ex parte discussions were had concerning Respondent's case and involving Commissioners Frank and Freeman.

At the July 31 meeting Commissioner Freeman voluntarily recused himself for prejudice (Ex 115, P 47, L 16).

- Page 75 -

Subsequently Commissioner Frank recused himself for prejudice (Ex 117).

It is the Respondent's position that where two of thirteen members on a Commission participate in the investigation and discussion of a Respondent Judge's case including meetings for the purpose of filing of Formal Charges, knowing that they are

prejudiced against the Respondent, that State and Federal due process rights of the Respondent have been violated.

AS TO GROUND FIVE

The JQC has formally charged the Respondent with two counts of improper public statements made in his capacity as an elected public official.

Charge 1A states that:

> On or about September 15, 1988, you made statements, widely reported in the local media, that local attorneys were like little children, acted goofy, made faces at you and that you should put them in jail so they could learn to read law books. You later retracted your statements and issued an apology.
>
> The news report complained of is attached hereto as Ex 28.

The speech complained of is the type of speech which is not only required by Canon 1 of the Florida Code of Judicial Conduct but is also closely protected by the First Amendment of the United States Constitution and Article One, Section Four,

of the Florida State Constitution.

AS TO GROUND SIX

The Respondent incorporates by reference the factual circumstances outlined in Ground One above.

AS TO GROUND SEVEN

The Respondent incorporates by reference the facts contained in his Amended Complaint for Injunction and Declaratory Relief on file in the United States District Court, Middle District of Florida Case Number 93-137-CIV-T-17B.

Wherefore based on the above stated factual basis and the arguments of law contained in the Memorandum of Law in Support of Fourth Amended Motion to Dismiss, the Florida Judicial Qualifications Commission and the Florida Code of Judicial Conduct should be declared to be unconstitutional and the charges against the Respondent should be dismissed.

Respectfully submitted,

HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Square,
Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to the Clerk of the Supreme Court of Florida, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, and a true copy mailed to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, Post Office Box 3401, Tampa, Florida 33601, this 1st day of June 1993.

Gary G. Graham

A 867.5

DOCUMENT 31

Florida Constitutional Provisions

Article V, Section 12

Discipline; removal and retirement. --

(a) There shall be a judicial qualifications commission vested with jurisdiction to ~~in~~vestigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966, (without regard to the effective date of this section) demonstrates a present unfitness to hold office, and to investigate and recommend the reprimand of a justice or judge whose conduct, during term of office or otherwise occurring on or after November 1, 1966 (without regard to the effective date of this section), warrants such a reprimand. The commission shall be composed of:

(1) Two judges of district courts of

appeal selected by the judges of those courts, two circuit judges selected by the judges of the circuit courts and two judges of county courts selected by judges of those courts;

(2) Two electors who reside in the state, who are members of the bar of Florida, and who shall be chosen by the governing body of the bar of Florida; and

(3) Five electors who reside in the state, who have never held judicial office or been members of the bar of Florida, and who shall be appointed by the governor.

(b) The members of the judicial qualifications commission shall serve staggered terms, not to exceed six years, as prescribed by general law. No member of the commission except a justice or judge shall be eligible for state judicial office so long as he is a member of the commission and for a period of two years thereafter. No member of the commission shall hold

office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may participate in his own campaign for judicial office and hold that office. The commission shall elect one of its members as its chairman.

(c) Members of the judicial qualifications commission not subject to impeachment shall be subject to removal from the commission pursuant to the provisions of Article IV, Section 7, Florida Constitution.

(d) The commission shall adopt rules regulating its proceedings, the filling of vacancies by the appointing authorities, the disqualification of members, and the temporary replacement of disqualified or incapacitated members. The commission's rules, or any part thereof, may be repealed by general law enacted by the majority vote of the membership of each house of the

legislature, or by the supreme court, five justices concurring. Until formal charges against a justice or judge are filed by the commission with the clerk of the supreme court of Florida all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the commission with said clerk of such formal charges against a justice or judge such charges and all further proceedings before the commission shall be public. The commission may with seven members concurring recommend to the supreme court the temporary suspension of any justice or judge against whom formal charges are pending.

(e) The commission shall have access to all information from all executive, legislative and judicial agencies, including grand juries, subject to the rules of the commission. At any time, on request of the speaker of the house of reprentatives

or the governor, the commission shall make available all information in the possession of the commission for use in consideration of impeachment or suspension, respectively.

(f) Upon recommendation of two-thirds of the members of the judicial qualifications commission, the supreme court may order that the justice or judge be disciplined by appropriate reprimand, or be removed from office with termination of compensation for willful or persistent failure to perform his duties or for other conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or be involuntarily retired for any permanent disability that seriously interferes wiht the performance of his duties. Malafides, scienter or moral turpitude on the part of a justice or judge shall not be required for removal from office of a justice or judge whose conduct demonstrates a present unfitness to hold office. After the filing

of a formal proceeding and upon request of the commission, the supreme court may suspend the justice or judge from office, with or without compensation, pending final determination of the inquiry.

(g) The power of removal conferred by this section shall be both alternative and cumulative to the power of impeachment and to the power of suspension by the governor and removal by the senate.

(h) Notwithstanding any of the foregoing provisions of this section, if the person who is the subject of proceedings by the Judicial Qualifications Commission is a justice of the supreme court of Florida all justices of such court automatically shall be disqualified to sit as justices of such court with respect to all proceedings therein concerning such person and the supreme court for such purposes shall be composed of a panel consisting of the seven chief judges of the judicial circuits of

the state of Florida most senior in tenure of judicial office as circuit judge. For purposes of determining seniority of such circuit judges in the event there be judges of equal tenure in judicial office as circuit judge the judge or judges from the lower numbered circuit or circuits shall be deemed senior. In the event any such chief circuit judge is under investigation by the judicial qualifications commission or is otherwise disqualified or unable to serve on the panel, the next most senior chief circuit judge or judges shall serve in place of such disqualified or disabled chief circuit judge.

A 874.5

DOCUMENT 32

Applicable Excerpts of the Florida Code of Judicial Conduct

PREFACE

Under Section 12(a), Article V of the Florida Constitution the Judicial Qualifications Commission is charged with the responsibility of enforcing these standards.

CANON 1

A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL HIS ACTIVITIES

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or authorize others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES OF THIS OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should

require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.

B. Administrative Responsibilities

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

CANON 4

A JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, and participate in other activities concerning

the law, the legal system, and the administration of justice.

A 878.5

DOCUMENT 33

Wisconsin Statutes

Wisconsin Statutes

§ 448.02 (1)

No person shall practice or attempt to hold himself out as authorized to practice medicine, surgery, or osteopathy, or any other system of treating the sick as the term "treat the sick" is defined in s. 445.01 (1) (a), without a license or certificate of registration from the examining board, except as otherwise specifically provided by statute.

§ 448.17

The examining board shall investigate, hear and act upon practices by persons licensed to practice medicine and surgery under s. 448.06, that are inimical to the public health. The examining board shall have the power to warn and to reprimand, when it finds such practice, and to institute criminal action or action to revoke license when it finds probable cause therefor under criminal or revocation statute, and the attorney general may aid the district attorney in the prosecution thereof.

§448.18 (2)

(2) Upon verified complaint in writing to the district attorney charging the holder of a license or certificate of registration from the examining board or chiropractic examining board with having been guilty of immoral or unprofessional conduct or with having procured his certificate or license by fraud or perjury, or through error, the district attorney shall bring

civil action in the circuit court against the holder and in the name of the state as plaintiff to revoke the license or certificate. The court may appoint counsel to assist the district attorney and either party may demand a jury. No one shall be privileged from testifying fully or producing evidence, but he shall not be prosecuted or subject to penalty on account of anything about which he so does, except for perjury in so doing. If the court or the jury finds for the plaintiff, judgment shall be rendered revoking or suspending the license or certificate and the clerk of the court shall file a certified copy of the judgment with the examining board. The costs shall be paid by the county, but if the court determines that the complaint made to the district attorney was wilful [sic] and malicious and without probable cause, it shall enter judgment against the person making the complaint for the costs of the action, and payment of the same may be enforced by execution against the body as in tort actions.

§ 448.18 (7)

(7) A license or certificate of registration may be temporarily suspended by the examining board, without formal proceedings, and its holder placed on probation for a period not to exceed 3 months where he is known or the examining board has good cause to believe that such holder has violated sub. (1). The examining board shall not have authority to suspend a license or certificate of registration, or to place a holder on probation, for more than 2 consecutive 3-month period. All examining board actions under this subsection shall be subject to review under ch. 227.

§ 15.405

(7) Medical examining board. There is created a medical examining board in the department of regulation and licensing. The medical examining board shall consist of 10 members appointed for staggered 4-year terms. Seven of the members shall be licensed doctors of medicine; one member shall be a licensed doctor of osteopathy; and 2 members shall be public members.

§ 227.20 Scope of review

(1) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, testimony thereon may be taken in the court and, if leave is granted to take such testimony, depositions and written interrogatories may be taken prior to the date set for hearing as provided in ch. 804 if proper cause is shown therefor.

(2) Unless the court finds a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision of this section it shall affirm the agency's action.

(3) The court shall separately treat disputed issues of agency procedure, interpretations of law, determinations of fact or policy within the agency's exercise of delegated discretion.

(4) The court shall remand the case to the agency for further action if it finds that either the fairness of the proceedings or the correctness of the action has been impaired by a material error in procedure or a failure to follow prescribed procedure.

(5) The court shall set aside or modify the agency action if it finds that the agency

has erroneously interpreted a provision of law and a correct interpretation compels a particular action, or it shall remand the case to the agency for further action under a correct interpretation of the provision of law.

(6) If the agency's action depends on any fact found by the agency in a contested case proceeding, the court shall not substitute its judgment for that of the agency if it finds that the agency's action depends on any finding of fact that is not supported by substantial evidence in the record.

(7) If the agency's action depends on facts determined without a hearing, the court shall set aside, modify or order agency action if the facts compel a particular action as a matter of law, or it may remand the case to the agency for further examination and action within the agency's responsibility.

(8) The court shall reverse or remand the case to the agency if it finds that the agency's exercise of discretion is outside the range of discretion delegated to the agency by law; is inconsistent with an agency rule, an officially stated agency policy or a prior agency practice, if deviation therefrom is not explained to the satisfaction of the court by the agency; or is otherwise in violation of a constitutional or statutory provision; but the court shall not substitute its judgment for that of the agency on an issue of discretion.

(9) The court's decision shall provide whatever relief is appropriate irrespective of the original form of the petition. If the court sets aside agency action or remands the case to the agency for further

proceedings, it may make such interlocutory order as it finds necessary to preserve the interests of any party and the public pending further proceedings or agency action.

DOCUMENT 34

Public Response to JQC Proceedings
Excerpts from Exhibit to Show Cause Response, #174

The following are seven representative letters of hundreds sent in support of Judge Graham after the close of the televised JQC proceedings.

A 885

March 25, 1993

Governor Lawton Chiles
Tallahassee, Florida

Dear Sir:

I am a resident of Citrus County. I am retired and from New York originally. There are many things said about New York but I never heard of alynching there to compare with the farce that is going on here.

I have watched the "trial" of Judge Graham on T.V. I can't say anything good about it. The panel consists of a pack of fools at least that is the way they appear on the screen. They laugh - yawn - look at the ceiling - it made me mad enough to send this letter to you.

I do not imagine that the judge never made a mistake, who hasn't? but the man is honest I do not think he could be corrupted.

He has stepped on some big toes here and it is open season on him. If he were to run for any office in this county I would vote for him.

I have no doubt that this farce has gone far enough and this witch hunt must

be brought to an end.

I have never sent a letter of this kind to anyone before. I am one of the silent majority but then again I never watched a lynching before.

Sincerely,
/s/Ciney Barhite
197 W. Sugarberry La
Beverly Hills, Fla 34465

A 887

March 20, 1993

Governor Lawton Chiles
The Capitol
Tallahassee Fl 32301-0001

Dear Governor Chiles:

First may I congratulate you on the admirable job you are doing under not only tremendous political pressure, but acts of God.

Secondly, I would like to share with you my feelings (the same as many others) concerning the Judge Graham affair here in Citrus County.

I do not know if the Judge abused power or committed any crime, but according to our local newspaper, The Chronicle, he certainly has. I am not certain what they are going to do for headlines when this fracas is over.

The panel, and particularly the chairman are so biased that even those who are anti-Graham have commented on it. I am certainly a layman where the law is concerned, but the JQC conspicuously changes the rules where it serves their purpose to persecute the Judge (and I do mean persecute, not prosecute). Truly, Governor, the chairman has acted in a despicable manner during this whole trial. His body language and countenance vary to belittle Judge Graham nearly every time he testifies and he continually cites vague rules to trample on Judge Graham's testimony. This entire trial has been a travesty.

My brother, the late Jerry Thomas, who at one time was President of the Senate and later ran for Governor (perhaps you knew him), once told me that if I every saw political injustice to tell the top gun; hence this letter.

Good luck, governor.

Respectfully,
/s/R. L. Thomas

A 889

March 23, 1993

3030 S. Oleander Terr.
Inverness, FL 34450-6902

Governor Chiles,

There is a vendetta being waged against Judge Graham by our local newspaper, various lawyers, elected officials and some repeat court offenders.

As a resident and voter, I felt obligated to start observing Judge Graham's court demeanor and decisions. I found him to be inevitably courteous and fair. He was being crucified for being unapproachable for special favors for the "Powers-that-be."

Please let the voters be the deciding voice in this matter. The J.Q.C. jury was decidedly rude and biased from the beginning to the end.

The voters of Citrus County will feel disenfranchised if we are not allowed to have a voice in this decision.

Sincerely,

/s/ Anne Beggs

A 890

March 24, 1993

Governor Lawton Chiles
The Capitol
Tallahassee, FL 32301-0001

Dear Governor Chiles:

I am writing on behalf of our family and friends to voice our support for Judge Gary Graham of Citrus County.

My husband and I know Judge Graham and consider him an honest and fair man who is only trying to maintain some level of decency in our court system. We need Judge Graham (and more like him) in our courts and we, the people, will do everything possible to keep him as our judge.

I also want to voice our disgust for the way the JQC hearings went. We think it was a disgrace the way Mr. Reiter treated Judge Graham. Mr. Reiter's attitude, and tone of voice when he spoke to the Judge, were totally uncalled for.

Mr. Bostic's conduct was also disgusting - I was outraged every time he faced the camera, or the people in the courtroom, and smirked when Judge Graham spoke. Mr. Reiter and Mr. Bostic showed more disrespect toward Judge Graham than he (Judge Graham) could every be charged with.

It is our opinion - and the opinion of many, many citizens of Citrus County - that Judge

Graham did not receive a fair hearing!

We also feel that Judge Graham has been through enough and should not have to worry about an added charge for using the resources of his offce to defend himself.

Enough is enough - Please leave our Judge alone!

Sincerely,

/s/Mrs. Karen A. Loger
5590 S. Calgary Terr.
Inverness, FL 34452

Dennis Keene
416 W. Buttonbush Drive
Beverly Hills, Florida 32665
(904) 746-1785

March 27, 1993

Governor Lawton Chiles
The Capitol
Tallahassee, FL 32301-0001

Dear Governor Chiles:

The letter is in reference to the investigation of Judge Gary Graham by the Judicial Qualification Commission. I fully appreciate that you have matters of greater import on your desk at this time. However this is something that should be capable of resolution by you without a great deal of effort.

My wife and I have supported Judge Graham and followed the workings of his court on our local Public Service television channel since its inception. Being a quasi-judicial member of the Citrus County Code Enforcement Board, I feel that I should be considered as a somewhat informed layman. At no time have I seen Judge Graham behave in a manner other than to preserve dignity and decorum in his court. He had admittedly been innovative in some of his rulings but never, in my opinion, unfair.

The JQC hearings which were televised in full only confirmed to the viewers some of the intense dislike and bias against

the Judge by some members of the legal profession. None of the alleged charges justified the enormous waste of tax dollars to pursue this matter, or the harassment of an honest and good public official.

I earnestly request that you intervene in this inquiry in the interest of fair play. You would make a lot of voters who watched this fiasco on television feel that there really is balance and justice in our legal system.

Sincerely yours,

/s/ Dennis Keene

A 894

George J. Cook
7 Utah Street
Beverly Hills, FL 34465

REFERENCE:

Proposed removal of Judge Gary Graham from the Citrus County Court System.

The recent (trial ???) conducted by the JQC on TV left me completely "flabergasted". I can't think of a more suitable term.

As a retiree I was privileged to watch every bit of that Circus. It was amazing that the Chairman of the JQC had the audacity of preventing the poor victim of defending himself with his rambling "Motion Denied" utterances that were monotonous. I have never seen nor heard of such conduct.

I have always brushed-off the phrase "Kangaroo Court" but now I can go to my grave knowing that I have seen one.

The so-called "Jury" has made a mockery of the Judicial system with it's members reading newspaper, talking to each other and somtimes sneering and laughing while the trial was in progress.

I am not proud of being a resident of Citrus County.

I say, and urge you to keep Judge Graham on the bench.

Sincerely,

/s/ George J. Cook

A 896

Doris and Douglas Holdread
1856 W. Gardenia Drive
Citrus Springs, FL, 34434

Hon. Judge Gary Graham
110 Apopka Ave.
Courthouse Square
Inverness, FL 32650

April 24, 1993

Dear Judge Graham,

Our hearts are heavy. We feel a real miscarriage of justice has been committed in Citrus County, Fla. One could weep for the loss of fairness and disregard for the people in our fair county.

We have been supporters of yours since our arrival in 1985. We have been privileged to hear you speak on several occasions and have both been called for jury selection twice. You have come across a true gentleman who has scruples and a sense of fairness.

We have fought the fight to the best of our abilities. We've written to Gov. Chiles, the JQC, the Citrus Chronicle 'Letters' also call ins and defended you, proudly, whenever the need arose.

Please know, Judge, we are praying that you will take your fight to the Supreme Court, will remain a practicing Atty. and will run for Judge again. We need you to

continue the fight against the improprieties imposed by the political powers that be.

Feel heartened in that your supporters feel stronger than ever that your place is as the Honorable Judge Gary Graham of Citrus County, Fla.

Warmest regards,

/s/Doris and Doug Holdread

DOCUMENT 35

Public Response to Formal Charges Against Judge Graham

Excerpts from Exhibit to Show Cause Response #108B

The following are seven (7) representative examples of hundreds of letters received by the JQC and the Florida Supreme Court after the JQC charges were filed against Judge Graham.

A 899

August 9, 1992

John H. Myers
19479 VFW Road
Brooksville, Fl. 34601
Phone #(904)-799-3734

Judge Gary Graham
P.O. Box 519
Inverness, Fl. 34451

Dear Judge Graham,

My wife and I wupport you 100% in your endeavor to insure Equal Justice for everyone, regardless of Race, Creed, Color or Bank Account. However, in small counties such as Citrus and also Hernando, this is contrary to the wishes and desires of certain Power Brokers. Nevertheless, I know, and I am persuaded that God will be with you and that you will come out victorious!!!

Also I am enclosing an article which appeared in the Hernando Today Newspaper concerning the nomination of Robert Battista to the Judicial Nominating Committee.

Sincerely yours,

/s/ John H. Myers

A 900

August 11, 1992

JQC
Room 102, Historic Capitol
Tallahassee, FL 32399-6000

Dear Members:

I have been a resident of Citrus County for 32 years and know many of the former (and present) politicians, Judges and Attorneys.

I do not know Judge Gary Graham personally but have attended his court proceedings and watch the Citrus County Court Hour on TV. I believe this Judge is what Citrus County needs in its judicial system. I admire his patience, understanding, sense of humor and fairness and believe he has done and is doing an outstanding service for this area.

I sincerely hope your Committee will carefully evaluate all the alleged charges against this man who is so sincere in his efforts to make Citrus County a safer and more pleasant place to reside.
Thank you.

Sincerely,

/s/Marian F. Schoen

cc: Judge Graham

A 901

August 6, 1992

HONORABLE JUDGE GARY GRAHM:

DEAR JUDGE GRAHAM, AS A RETIRED MILITARY (38 yrs) RESIDING IN SUGARMILL WOODS I COMMEND YOU ON THE STAND YOU ARE TAKING AGAINST THE SPECIAL INTEREST INDIVIDUALS, ESPECIALLY THE SHERIFF.

YOU ARE CORRECT IN STATING THAT THE JQC GROUP IS UPSET DUE TO THE FACT THAT YOU HAVE STOOD UP AGAINST ONE OF THEIR OWN NAMELY FORMER JUDGE, A DISGRACE, LEONARD DUMRON.

AS A LAW AND ORDER INDIVIDUAL I AM CERTAIN THE CITIZENS OF THIS COMMUNITY AND THE COUNTY ARE 100% BEHIND YOU.

AS FAR AS THIS INDIVIDUAL IS CONCERNED THE LOCAL NEWSPAPERS DID NOT DO A JOB THAT SHOULD HAVE BEEN DONE WITH DAMRON, WITH THE CONSTANT PETTY COMMENTS ABOUT YOUR STYLE ON THE BENCH I HAVE CANCELLED THEIR SUBSCRIPTIONS.

JUDGE AS A FORMER NEW YORKER, FAMILIAR WITH THE JUDUCIAL SYSTEM AND DRESS IN N.Y I COMMEND YOU ON YOUR DRESS CODE AND LANGUAGE IN THE COURT ROOM.

KEEP UP THE GREAT WORK YOU HAVE DONE AND ARE DOING, AS A CZECHOSLOVAK RESIDING IN THIS GREAT COUNTRY WHICH I HAVE FOUGHT FOR MANY TIMES OVER, I REPEAT OUR MOTTO "TRUTH WILL PREVAIL" WOULD LIKE TO SEE YOU IN ACTION IN OUR COURT ROOM.

RESPECTFULLY YOURS,

/S/SAM B. CERNEK

CSH Samuel B. Cernek
7 Cypress Blvd. E.
Homosassa, FL 34446

GLOYD M. RESOR
203 South Davis Street
Beverly Hills, Florida 34465-4141

August 13, 1992

Judicial Qualification Commission
The Historic Capital, Room 102
Tallahassee, Florida 32399

Gentlemen;

As an interested ten year resident and taxpayer in Citrus County I voice my opinion concerning the current scheduled Judge Graham hearings.

Without full knowledge of all the intimate charges listed I feel that he is being crucified by some in the legal profession, some county officials and the media; the only purpose being to have him removed from the bench.

While minor deficiencies might be proven, on an overall basis Citrus County is a better place because of his forthright stand on many issues. He conducts his court in an entirely professional manner and is to be commended for demanding respect for the court. Under no circumstances should he be removed from the bench. I sincerely hope that your findings support this conclusion.

Sincerely yours,

/s/ Gloyd M. Resor

A 903

12 CATALPA CT
SUGARMILL WOODS
HOMOSASSA, FL 34446
AUGUST 11, 1992

JQC ROOM 102
HISTORICAL CAPITAL
TALLAHASSEE, FL 32339

RE: JUDGE GRAHAM

BOTH MY WIFE AND I WOULD LIKE TO EXPRESS OUR FEELINGS ABOUT THE UP-COMING INVESTIGATION OF JUDGE GRAHAM.
WE ARE NOT NEW COMERS TO CITRUS COUNTY, HAVING LIVED HERE OVER TEN YEARS. WE'VE SEEN A LOT OF CHANGES OVER THOSE YEARS WITH ONE IN PARTICULAR -- CITRUS COUNTY COURT. THAT PARTICULAR CHANGE CAME ABOUT WHEN THE PEOPLE OF CITRUS COUNTY ELECTED GARY GRAHAM. BRINGING IN A TOUGH JUDGE WHO WAS HONES AND DECENTONE WHO WAS NOT AFRAID TO SPEAK OUT WHEN HE SAW AN INJUSTICE-AN INDIVIDUAL WHO BROUGHT RESPECT TO CITRUS COUNTY COURT'S AND MADE THOSE WHO BROKE THE LAW REGRET THEIR TRESPASSES AND NOT WANT TO APPEAR AGAIN BEFORE JUDGE GRAHAM.
YES THEY COMPLAINED BITTERLY BUT THEY WERE WELL AWARE OF WHAT THEY HAD DONE AND CERTAINLY DID NOT WANT TO APPEAR AGAIN.
HE ALSO BROUGHT A BETTER UNDERSTANDING OF WHATS EXPECTED OF BOTH PROSECUTING AND DEFENSE LAWYERS IN THE COUNTY COURT, SOMETHING THATS BEEN NEEDED FOR A LONG TIME.

JUDGE GRAHAM HAS BEEN A GREAT ASSET TO THIS COUNTY AND I HOPE IN YOUR JUDICIAL WISDOM YOU MAY ALSO SEE THE GREAT JOB HE IS DOING.

HE HAS OUR GREATEST SUPPORT AND WE ALSO HOPE HE WILL HAVE YOUR SUPPORT TO MAKE CITRUS

COUNTY ONE OF THE BEST COUNTIES IN FLORIDA LED BY A GREAT JUDGE.

OUR VIEWS MAY DIFFER FROM THAT OF THE MEDIA OR THE POLITICAL CROWD THAT FEEL THE PEOPLE OF CITRUS DON'T KNOW WHAT THEY WANT, BUT A MAJORITY ELECTED JUDGE GRAHAM AND THAT CERTAINLY MUST STAND FOR SOMETHING.
PLEASE --DON'T FAIL THE PEOPLE OF CITRUS COUNTY.
KEEP JUDGE GRAHAM AS OUR JUDGE.

RESPECTFULLY

/s/JOSEPH J. REISS /s/WINIFRED V. REISS

A 905

August 20, 1992

Florida State Supreme Court
Supreme Court Building
Tallahassee, Florida 32399

Gentlemen:

We wish to express our favor for Honorable Gary Graham, our Citrus County Judge.

Judge Graham's tenure is the best thing that ever happened to the Judicial System in Citrus County.

His stern no-nonsense treatment of law-breakers that appear before his Court is just what our County has needed for many years. Judge Graham is wellschooled in the law, and he treats fairly all who appear before him.

The good citizens of Citrus County approve of Judge Graham's actions. We want to keep him in office for as long as he is willing to stay.

Sincerely yours,

/s/ John F. Atkinson and Emmaruth Atkinson
211 South Barbour Street
Beverly Hills, FL 34465-4054

cc: Honorable Judge Gary Graham

A 906

August 9, 1992

Judicial Qualifications Committee
Room 102
Historical Capitol Building
Tallahassee, Florida

re:
Judge Gary GRAHAM

The undersigned hereby submits this letter in support of Judge Gary Graham of Citrus County who has been the target of an unfounded investigation. Judge Graham is honest, professional, and runs his court with integrity and decorum. Our family of 4 voters supports him as we have in the past and will support him again in 1994.

Citrus County has many so called good old boys in its political network which is eroding very fast. This shadow government as I call it will die out in years to come, and citizens again will regain control of their government. Judge Graham does NOT bend to the will or whim of the power brokers of this county. We respect him for that.

Sincerely,

Casimer J. Smerecki
for:
Betty Ann Smerecki
Randall Smerecki
Raymond Smerecki

5477 S. Burr Terrace
Inverness, Florida
34452

DOCUMENT 36

Public Response to Adverse Publicity Prior to Charges Against Judge Graham

Excerpts from Exhibit to Show Cause Response #108A

The following are seven representative examples of hundreds of letters received by Judge Gary Graham prior to the JQC Complaint filed against him.

A 908

Pat Grubbs
813 Wakulla Dr.
Winter Haven, Fla.
33884

Dear Judge Graham,

I have read of your decisions on various cases recently with great interest. The Tampa Tribune has reported some of what they called unorthodox rulings.

I just want you to know that some of John Q. Public are saying "finally, Thank God". It is about time that someone with your attitude, "You can't separate morality from the law" made an impact on the justice system of this State.

I hope you will never be deterred by your critics. I only hope some of the youth of this state are hearing about you and your decisions.

You are giving me hope for the Justice system of this state when I was beginning to despair.

I am a native Floridian from five generations of Fla. pioneers and I love this state and care greatly about it's future and our children's future.

As one grateful citizen of Fla. I want to thank you and say, Keep up the good work.

Yours truly,

/s/Patricia A.
Grubbs

A 909

3330 E. Dale Ct.
Hernando, FL 32642
3-10-89

Citrus County Courthouse
110 North Apopka Avenue
Inverness, FL 32650

Dear Judge Graham,

I had a great time at your courtroom. I think it would be real fun to be a Judge. But I want a job wher I can have weekends off. I have heard people say that you are mean. But I think you're real nice.

Your Friend,

/s/ Colleen O'Connor

Miss Harding's 5th grade. Hernando Elem.

A 910

Central Catholic School
of Citrus County

May 28, 1992

Judge Gary Graham
Old Courthouse
1 Courthouse Square
Inverness, Fl 32650

Dear Judge Graham,

We really appreciated being able to come see you in a court session. We were amazed at some of the cases. You handled all of them very well. We were glad you gave some of the people a compassionate hearing. You are really dedicated to your job. Your talk with us really encouraged us to learn more about the laws of the county. Your talk also uplifted our spirits, made us enjoy being there, and gave us some insights in what being a judge is all about. We have watched the video many times.

Thank you very much.

Sincerely,

/s/Faith Powers
7th & 8th Grades

4340 West Homosassa Trail - Lecanto, Florida
32661

1340 N. Paulette Terr.
Inverness, FL 32650
July 14, 1990

Judge Gary Graham
Citrus County Courthouse
1 Courthouse Square
Inverness, Fl. 32650

Dear Judge Graham:

I know you have received a great deal of negative publicity and criticism concerning your views toward proper conduct in the courtroom and unusual sentences. I want you to know that I support your effort, 100%. It is refreshing to find public officials who still believe in respect and demand respect. It is a basic component in any form of communication. I run my high school classes the same way you run your court.

Keep up the good work!

Sincerely,
/s/Miss Martha Clutter

A 912

Kerry Anne Wieland
c/o The University of Tampa
P.O. Box 878
Tampa, FL 33606

5.7.1990

Judge Graham
Citrus County Courthouse
1 Courthouse Square
Inverness, FL 32650

Judge Graham:

My apologies for your short title, the courthouse operator hung up before I was able to get your full name. I am writing to you in response to seeing you on the Eye of Tampa Bay show a week or so back. I would like to take this opportunity to applaud your creative sentencing, and the courage with which you carry it out. It is nice to see discretion used where there is room for it; not only does it keep our lives from becoming dull, it puts perspective on things - a perspective that I think our criminal justice system may have lost. I would also like to thank you for having the courage to wear the "black hat" when necessary; not too many who face the political pressure that you do are willing to do that. But most of all, I would like to express my sincere gratitude for keeping with your obligation as a public servant, by doing something about what you overheard at the restaurant/bar. If you don't keep that CocaCola driver off our roads, no one will. Thank you.

As I approach my last year at the

University of Tampa, I expect to be doing an internship with someone next Spring, after which I hope to attend law school. I hope the person I do an internship with is someone of your stature.

Sincerely,

/s/Kerry Anne Wieland

Dear Judge Graham,

On Wednesday the 31st of December my husband and I attended traffic court as vistors, we had read so much about you and wanted to see you in action ourselves.

We were very impressed. You were very fair, you are just what this county needed, we moved here from St. Pete and were very proud to have you as a judge.

I am glad you said what you did to the press, they need to be taught a few things as they are so unfair.

Keep up the good work.

Sincerely,

/s/Judy Imzarry

A 915

UNIVERSITY OF FLORIDA
Office of Administrative Affairs
Gainesville, 32611-2078

Police Department
Building 51 Museum Rd

June 29, 1992

Citrus County Judge Gary Graham
1 Courthouse Square
Inverness, FL 34450-4802

Dear Judge Graham:

On behalf of women everywhere, I would like to thank you for the stand you took against sexual harrassment in your courtroom recently. An article appeared in the Gainesville Sun last week telling of a defense attorney referring to an assistant state attorney as "little lady."

It's hard to believe this is 1992 and women are still subjected to such deplorable behavior from men in the work force. As a working mother of two young dauthters, I can only hope attitudes change when it's time for them to make career decisions.

I'm not usually one to write such a letter, but it was very satisfying to see a reputable man such as yourself take a strong stand against such neanderthal behavior. If I lived in your district you

would get my vote!

Best regards,

/s/Angie Tipton
Sr. Information Spec.

DOCUMENT 37

Motion in Limine dated February 18, 1993

- Page 1 -

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

IN RE INQUIRY CONCERNING:
A JUDGE
No. 91-415
_____/

CASE NO. 80,273

MOTION IN LIMINE

Special Counsel, in anticipation of the hearing scheduled for February 23, 1993, and in compliance with the Order re: Trial and Pre-trial Preparation, dated February 5, 1993, hereby files this Motion in Limine seeking to exclude from evidence certain witnesses and exhibits proposed by the respondent and in support thereof states as follows:

On August 7, 1992, the Commission filed a Notice of Formal Charges against the

respondent, the Honorable Gary Graham, County Court Judge for Citrus County, Florida.

The Notice charged respondent with six violations of the Code of Judicial Conduct and contained thirty-one separate factual allegations supporting the charges. On October 24, 1992, an Amendment to the Notice of Formal Charges was filed against respondent by the Commission. The Amendment contained fourteen separate factual allegations in support of several of the violations contained in the original Notice.

In response to the Notice and its Amendment respondent filed a Motion to Dismiss, Amended Motion to Dismiss and Second Amended Motion to Dismiss. Respondent also filed various memorandum and approximately one hundred and fifty exhibits in support of his

motions. Respondent sought to dismiss the charges on a variety of grounds. Included among those grounds were claims that the Commission was an unconstitutional institution, that the Commission had violated his rights to due process, and that the Florida Code of Judicial Conduct was unconstitutional. The Commission denied the respondent's Motions to Dismiss.

Following the denial of his Motions to Dismiss, respondent filed an Answer and certain affirmative defenses. The Answer generally denied all of the allegations of the Notice and its Amendment. Respondent set forth eleven separate affirmative defenses. Each of these affirmative defenses were denied by Special Counsel in his response. Included among the affirmative defenses are:

FIRST AFFIRMATIVE DEFENSE

The JQC is an unconstitutional institution which violates the procedural due process rights protected by the State and Federal Constitutions and therefore lacks jurisdiction to proceed against the respondent judge.

SECOND AFFIRMATIVE DEFENSE

The Florida Code of Judicial Conduct is so vague that a reasonable person would not be put on notice of what conduct is proscribed. Accordingly, it violates the state and federal substantive due process rights protected by the State and Federal Constitutions and is unenforceable.

EIGHTH AFFIRMATIVE DEFENSE

The charges against the respondent judge do not logically fall within the category of habitual judicial

intemperance or unbecoming judicial conduct as contemplated in §17, Article V, Florida State Constitution (sic). The conduct did not descend into rancorous personality or verbal impropriety and represents a mare's nest of trivial charges designed to vent the spleen of disappointed litigants and special groups with an axe to grind. Accordingly, the JQC is without subject matter.

TENTH AFFIRMATIVE DEFENSE

The prosecution of the respondent judge with regard to the trivial matters contained in the Notice of Formal Charges is an impermissible selective prosecution obtained through political pressure put upon the Commission in the form of exposure to misleading adverse and critical newspaper

editorials and threats of legal action against it.

A Hearing was scheduled to commence on January 26, 1993. The Notice of Formal Charges and its Amendment were consolidated for the Hearing. The Commission granted Special Counsel's Motion in Limine and restricted respondent's opinion witnesses to no more than two and character witnesses to no more than three. The Commission also ordered that Special Counsel and respondent provide a complete list of all witnesses and a short statement regarding

their testimony and a complete list of all documents with sufficient description to identify each document. The respondent first responded to the Order by stating that he was "completely unable to comply with the trial order by the deadline."

Respondent issued a second response stating he would call as witnesses any citizen of the State of Florida with knowledge of Citrus County Court proceedings, any and all law enforcement officers of the State of Florida, any parking enforcement specialists, any elected public official, any and all judges of the State of Florida, any other witnesses not thought of which occur to the respondent judge prior to or during the trial and expert witnesses on the Florida Code of Judicial Conduct, journalism, due process of law, and any other area of expertise that can be thought of prior to or during the trial. Respondent stated that he would introduce any document related to the charges or defenses in the case including those related to the Motion to Dismiss.

The Hearing commenced on January 26, 1993 and continued through the evening of

January 29, 1993. During the Hearing, at the request of Special Counsel, the Commission struck seventeen of the factual allegations from the consolidated notice. In response to respondent's Motion for Directed Verdict, the Commission struck two factual allegations from the consolidated notice. As a result, the consolidated notice now contains twenty-six separate factual allegations in support of the six violations of the Code of Judicial Conduct.

At the close of the Hearing on January 29, 1993, the

Commission ordered that the respondent comply with the previously entered Order and provide a witness list and exhibit list prior to the Hearing. Respondent recently provided Special Counsel with both lists. The witness list contains approximately four hundred

and seventy witnesses including:

(1) approximately two hundred and fifty witnesses to testify regarding their observations of the administration of justice in the Citrus County Court;

(2) Approximately one hundred judges to testify regarding the Code of Judicial Conduct;

(3) Approximately forty witnesses to testify regarding politics and favoritism in Citrus County;

(4) Approximately eighteen to testify concerning "attorney misconduct";

(5) Approximately fifteen witnesses to testify regarding "selected prosecution", including Vice Chairman Kaney who was to testify regarding "his judicial misconduct.";

(6) Approximately ten witnesses to testify regarding alleged misconduct

of the members of this Commission;

(7) Former Citrus County Court Judge Leonard Damron to testify regarding jail release policies; and

(8) Haley Rolette to testify concerning "what he thinks about the JQC and Brad King.

Respondent's Exhibit List consists of approximately seven hundred exhibits, including:

(1) approximately one hundred newspaper editorials;

(2) approximately four years of general office correspondence;

(3) approximately two hundred and fifty video tapes of respondent's court;

(4) respondent's Complaints regarding Circuit Court Judge John Thurman;

(5) two composite exhibits of

approximately four hundred letters of support;

(6) approximately one hundred hearing transcripts;

(7) surveillance type photographs of a sheriff's deputy;

(8) various journal articles relating to attorney conduct;

(9) the opinion of the Supreme Court in the case of former Citrus County Court Judge Leonard Damron;

(10) various newspaper articles to former Citrus County Court Judge Leonard Damron;

(11) letters to the editor of local newspapers; and,

(12) photographs of the Marion County Courthouse.

It is not possible or necessary to respond with specific objections to each

witness and exhibit given the time allotted or to make the objections to the number of documents and witnesses. However, it is apparent from even a cursory reading of the witness list and exhibit list that very few of the proposed witnesses or exhibits relate to the six charges pending against the respondent and the twenty-six factual allegations supporting those charges. It is also apparent that the majority of the proposed witnesses and exhibits relate to four of the eleven affirmative defenses raised

by the respondent. Those four affirmative defenses are that the Code of Judicial Conduct is unconstitutional, that the Commission itself is unconstitutional, that respondent is the subject of an impermissible selective prosecution in light of the alleged

misconduct of other judges and that the charges against him are a result of a conspiracy by his political enemies.

For the reasons discussed herein, the Commission should exclude any proposed witnesses or exhibits relating to respondent's affirmative defenses, especially the four set forth above. First, and most importantly, this Commission does not have the jurisdiction to hear these affirmative defenses. The Commission is not a court of general jurisdiction. Art. V, §12, Fla. Const., created the Commission and vested it with the jurisdiction to investigate and recommend to the Supreme Court of Florida the removal from office of any justice or judge whose conduct demonstrates a present unfitness to hold office and to investigate and recommend the reprimand of any justice or judge whose conduct warrants such

reprimand. The Commission is an arm of the Florida Supreme Court dealing with the vital function of judicial discipline and is under the exclusive jurisdiction of the court. In re: Kelly, 238 So2d 565 (Fla. 1970). The jurisdiction of this Commission is limited to determining if the charged conduct occurred, if the conduct was a violation of the Code of Judicial Conduct and an appropriate recommendation to the Florida Supreme Court. Nothing in the Constitution, the Florida Statutes, the cases of the Florida Supreme Court or the rules of the Commission

vest the Commission with the jurisdiction to consider respondent's affirmative defenses.

Even if the Commission possessed the jurisdiction to consider the affirmative

defenses, they are not relevant to the conduct charged in the consolidated notice. §90.402 of the Florida Evidence Code provides that all relevant evidence is admissible. The evidence is admissible. The evidence code excludes, by implication, evidence that is not relevant. Ehrhardt, Florida Evidence §402.1 n.1 (1992 Edition). In order for evidence to be relevant, it must have a logical tendency to prove or disprove a fact which is of consequence to the outcome of the action. Gibbs vs. State, 394 So2d 231,232 (Fla. 1st DCA 1981), affirmed, 406 So2d 1113. The definition of relevant evidence includes traditional principles of relevance and materiality. Ehrhardt, Florida Evidence §401.1 n.1 (1992 Edition). Whether or not the respondent has "political enemies" who have come together in opposition

does not have a logical tendency to prove or disprove the facts set forth in the consolidated notice. Further, whether or not other judges may or may not have violated the Code of Judicial Conduct is also not relevant to this proceeding and is also beyond the jurisdiction of the Commission. The only issues before the Commission are whether or not the respondent committed the acts alleged in the Notice and if those acts constitute a violation of the Florida Code of Judicial Conduct. Any affirmative defenses must relate to those charges. Respondent's proposed witnesses and exhibits are merely his latest attempt to thwart this Commission, delay this proceeding and focus on the alleged

misconduct of others.

Most of respondent's affirmative

defenses were raised in his motions to dismiss which were denied by the Commission. The affirmative defenses are legal defenses and do not require any additional proof beyond the record of this proceeding even if they were determined relevant to this proceeding.

Wherefore, for the reasons set forth above, Special Counsel seeks an order generally excluding from the evidence in this proceeding the witnesses and exhibits proposed by the respondent which relate to issues which are beyond the jurisdiction of this court, are not relevant or material to the issues of this proceeding or are legal in nature and do not require any proof beyond what is already in the record. Additionally, and more specifically, Special Counsel seeks an order excluding from evidence the witnesses and exhibits proposed

by the respondent which relate to his affirmative defenses.

Respectfully submitted.

/s/Terrance A. Bostic
Special Counsel
Florida Bar No. 304336
P.O. Box 3401
Tampa, FL 33601-3401
(813) 254-7771

I hereby certify that a copy of this Motion in Limine was provided by telefax to the Honorable Gary Graham on February 17, 1993 and hand delivered on February 18, 1993.

/s/Terrance A. Bostic
Date: 2/17/93

A 934.5

DOCUMENT 38

News Article, Citrus County Chronicle
September 15, 1988
(Judge says some attorneys act goofy)

FRONT PAGE HEADLINE:
JUDGE TAKES AIM ON CRITICAL ATTORNEYS

BOXED QUOTE:
"IT'S ALL BASED ON DISGRUNTLED ATTORNEYS WHO WANT THE JUDGE TO WHOLESALE ACCEPT NEGOTIATIONS."

GARY GRAHAM

ARTICLE (Front Page Only)

County Judge Gary Graham on Wednesday said a number of area attorneys who don't like him have criticized him for not accepting their negotiated pleas, which could prompt him to stop considering some pleas.

"It's all based on disgruntled attorneys who want the judge to wholesale accept negotiations," he said.

"Many of the defense attorneys in this area don't like me," he said. "One reason is because i won't have ex parte discussions, where it's held outside of the courtroom, and the other party in a case is not present."

Graham said he also will not allow attorneys to call him on the phone or write to him about their cases.

Graham said to do so is wrong and could be grounds for a judge's removal from office.

He said some area attorneys want to do such things because, "The other party isn't there to defend themselves and it's convenient. It's easier than having a hearing."

He also claimed of some members of the Bar, "Many of them have always opposed me because I've always put justice above convention. They can't accept the fact that their jobs are more difficult now because I follow the rules."

"They want to go back to the days where they had a friend in court," he said, "who will do what they want."

Graham said he forces attorneys to discuss plea negotiations with him in open court only.

He added, "They also dislike me because I make them act right in court."

He also said he believes it shows disrespect to the court if attorneys are not on time, bicker amongst themselves, act "goofy", and don't "talk like attorneys" or "dress like attorneys."

"And I'm going to start taking actions against attorneys who do not act right," Graham said.

He said he will caution them the first time they do it; then on second offense take away their privilege to have him call their cases out of the docket's order for their convenience; then on third occurrence hold them in contempt of court, fining them; on the fourth time hand them community control; and the fifth time put them in jail.

"Maybe when they're over there they can read some law books and learn how to act in court," he said.

"There are many fine attorneys in the

Citrus County Bar Association who do a fine job, act right, and get good results for their clients. You don't see their names in the papers and you don't see their clients in jail."

"The judge has a prerogative to control the court decorum and to control the attorneys n the courtroom," said Inverness attorney Richard "Spike" Fitzgerald, who recently sought Graham's disqualification in a case after Graham wouldn't accept his client's negotiated plea.

He added, "In the twelve years I've practiced, I do not recall many attorneys who have been held in contempt."

"Whenever I've been in his courtroom, the attorneys have always been respectful to the court."

On Wednesday Graham said he may start refusing to accept any plea negotiations from certain attorneys.

The issue began to come to a head after a whispered, bench-side discussion in the county courtroom on Monday, Graham told Crystal River Attorney Paul Hawkes, "I've reached my limits of tolerance with attorneys in the county who don't acknowledge the court's duty to make sure that sentences are fair.

Graham told Hawkes that from Monday on he was going to refuse to

Please see **Graham**, page 5A

DOCUMENT 39

Motion for Continuance
dated December 18, 1992

BEFORE THE FLORIDA JUDICIAL

QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 91-415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

SUPREME COUR
NO. 80,273

MOTION FOR CONTINUANCE

Comes now the Honorable Gary G. Graham, Citrus County Court Judge, Respondent Judge in the abovestyled cause, and makes this his Motion for a Continuance.

FACTS UPON WHICH THIS MOTION IS BASED

1. The Respondent Judge received an initial Notice of Investigation on April 28, 1992. He was "invited" to appear before the JQC on May 18, 1992, to explain eight charges of misconduct, giving Respondent just three weeks to prepare for the meeting. Some of these charges related back to

incidents some three years in the past and required research into Court files and the difficult transcription of electronic court reporting tapes. Respondent was expected to do this while carrying on all of his full-time duties as the sole Courty Court Judge for Citrus County.

2. Attorney Richard Earle, Jr., on behalf of the Respondent, in a special limited appearance, requested a continuance from Attorney Roy Rhodes, Counsel for the Commission. Mr. Earle, a former Chairman of the JQC, had advised Respondent that such motions were routinely granted. The JQC denied the motion.

3. Respondent traveled from Inverness, Florida, to West Palm Beach on May 18, 1992, to renew his motion for a continuance. The motion was then granted but only for the reason that the Commission wanted

additional time to charge the Respondent with additional misconduct. Respondent's hearing was continued to July 31, 1992.

4. On May 17, 1992, Respondent requested that the JQC schedule approximately six hours for the hearing scheduled for July 31, 1992.

5. On June 29, 1992, Respondent received an Amended Notice of Investigation. At that point the Respondent had only 32 days to complete his preparation on the original eight charges and to begin preparation on 25 additional charges, some of which related back to incidents four years in the past and which also required the difficult transcription of electronic court reporting tapes.

6. On the same day, Respondent received a letter advising him instead of having 6 hours to explain or refute 8 charges, he would have 3 hours to explain

or refute 31 charges. Thus, if Respondent talked nonstop without interruption or questioning, he was allowed 5.6 minutes to explain or refute each of the charges.

7. Furthermore, when Respondent appeared at the purported Rule 6(b) hearing, he was quickly admonished not to

waste any time on preliminaries lest he might cut into his allotted time.

8. On August 7, 1992, the Commission filed a 31-count Notice of Formal Charges against Respondent charging him with being unfit for, among other things, questioning a State Attorney about why he was prosecuting 4th offense felony DUI cases in misdemeanor court, criticizing attorneys for acting goofy in court, and requiring drunk drivers to obtain bicycles so they could have transportation to work while on probation.

9. In response to the Notice of Formal

Charges, the Respondent timely filed a 58-page Motion to Dismiss, supported by 130 attached exhibits and a trial memorandum of law. Respondent contemporaneously filed a Motion for Extension of Time to File a Second Memorandum of Law, requesting that the Respondent be given 30 days to prepare a second memorandum and requesting that the Commission not rule on the Motion to Dismiss until the second memorandum was filed.

10. The Florida Rules of Civil Procedure (applicable to this action pursuant to FJQCR 12) do not require a litigant to seek extensions of time for the filing of additional memorandums of law. The Respondent requested the extension because given the obvious intention of the Commission to rush the Respondent through each stage of the proceeding, the

Respondent was concerned that the Commission would deny his Motion to Dismiss without notice and without hearing as to the facts upon which the Motion was based. Accordingly, Respondent at a minimum wanted the Commission to know the law.

11. The Respondent was granted the requested extension of time to file a second memorandum which was due October 10, 1992.

12. The Commission scheduled a second Rule 6(b) hearing for October 22, 1992, for the purpose of hearing a response to a Supplemental Notice of Investigation. The Supplemental Notice of Investigation was received on October 5, 1992, just 13 working days prior to the scheduled hearing. It contained 14 additional charges of misconduct, some dating back as far as five years and which involved investigation of court files and in some cases the difficult

transcription of electronic court reporting tapes.

13. In addition to the required preparation for the

While the Disposition of Motion stated that the Second Memorandum of Law was to be filed on October 3, 1992, upon further motion by Respondent the Commission notified Respondent that he would have until October 10, 1992. Since October 10, 1992, was a Saturday, the actual deadline was, therefore, October 12, 1992.

supplemental notice, the Respondent was then under an October 10 deadline for the filing of the second memorandum of law involving the complex legal issues raised by the Notice of Formal Charges.

14. The Respondent filed a Motion to Continue the October 22, 1992, Rule 6(b)

hearing.

15. The Motion to Continue was denied.

16. The Respondent timely filed a 58-page Amended Motion to Dismiss supported by 151 exhibits and a 56-page Second Memorandum of Law in Support of Amended Motion to Dismiss.

17. Special Counsel for the Commission filed a Response to the Amended Motion to Dismiss on October 16, 1992. The Response was not received by the Respondent until October 20, 1992. The Response alleged that the Respondent's Amended Motion to Dismiss was ". . . mean spirited, insulting, defaming, insufficient, and <u>false</u>." (Emphasis added.)

18. As feared, on October 21, 1992, the Motion Committee of the Commission denied the Respondent's Amended Motion to Dismiss without notice, without hearing, without an opportunity for the Respondent to prove

his speaking motion by the introduction of testimony and evidence, and without an opportunity to respond in writing or otherwise to Special Counsel's Response.

19. On that same day, General Counsel for the Commission unilaterally noticed the case for final hearing on January 26, 1993, prior to the close of pleadings in this case.

20. Respondent appeared before the Commission on October 22, 1992, in West Palm Beach. The Commission allowed three hours for the Respondent to explain, refute, or admit the alleged misconduct. The Respondent was unable to present his case due to the time limitation imposed upon him. The Commission refused to grant additional time for the Respondent to present his case, cut him off, and ended the hearing.

21. On October 22, 1992, the Commission

also approved the Motion Committee's denial of the Amended Motion to Dismiss. The order on the Amended Motion to Dismiss was filed on October 26, 1992. It stated that the Respondent's answer shall be filed within 10 days of the certificate of service of the order.

22. On October 26, 1992, the Commission also filed an Amendment to Notice of Formal Charges alleging the additional 14 counts of misconduct including the fact that the Respondent had obtained court records and motor vehicle records to prepare for his defense.

23. The Commission's order denying Respondent's Amended Motion to Dismiss and Amendment to Notice of Formal Charges

was not received by the Respondent until October 28, 1992.

24. Respondent tried on October 29,

1992, to contact Special Counsel for the Commission but he could not be reached.

25. On October 30, 1992, Respondent succeeded in contacting Mr. Terrance Bostic, Special Counsel for the Commission, and discussed with him the conflict in the Commission's filing of an Amendment to Formal Charges on October 26, 1992, and requiring an answer within 10 days of that date, an unreasonable time limitation considering the complex issues involved. Respondent requested that Mr. Bostic stipulate that the Respondent should be allowed to file an answer or a second amended motion to dismiss directed to the Formal Charges as amended and as a whole within the time limitations prescribed by Fla.R.Civ.P. 1.140(a).

26. On Saturday, October 31, 1992, Mr. Bostic contacted Respondent and advised him that he would not stipulate to the

Respondent's request and would object to any request for the Commission to correct its order on the Amended Motion to Dismiss.

27. On Sunday, November 1, 1992, Respondent prepared a Petition for Constitutional Writs, Case Number 80,708.

27a. The Petition for Constitutional Writs requested.

(1) That the Florida Supreme Court direct the Commission to vacate its Notice of Hearing and not set a

final hearing until the case is at issue.

(2) That the Florida Supreme Court direct the Commission to vacate that portion of its Order dated October 26, 1992, denying Respondent's Amended Motion to Dismiss requiring Respondent to file an answer within 10 days of October 26, 1992.

(3) That the Florida Supreme Court direct the Commission to allow Respondent

to answer or file appropriate motions including a second amended motion to dismiss directed to the Notice of Formal Charges as a whole and as amended by the Amendment to Notice of Formal Charges within the times specified by Fla.R.Civ.P. 1.140 and 1.090(e), specifically within 25 days of October 26, 1992.

(4) That the Florida Supreme Court direct the Commission to provide reasonable notice of any hearing on the Respondent's anticipated second amended motion to dismiss and that Respondent be allowed to produce evidence and present testimony and legal argument before the Commission rules on said motion.

27b. The Florida Supreme Court declined relief on items (2) and (3).

27c. Item (4) became moot for the reason that prior to the Florida Supreme Court entering an order the Respondent's Second

Amended Motion to Dismiss was denied by the Commission

without notice, without a hearing, and without allowing Respondent to produce evidence or present testimony or legal argument before the Commission.

27d. Item (1) is still pending before the Florida Supreme Court.

27e. Respondent requested the Clerk of the Florida Supreme Court to request that Case Number 80,708 be expedited by letter dated November 23, 1992.[2]

27f. As of this date the Florida Supreme Court has not ruled on Respondent's requested relief and the hearing is still scheduled for January 26, 1993.

28. Failing to hear from the Florida Supreme Court, Respondent, during the first week in December, set himself to the task of subpoenaing for both deposition and for

trial the several hundred witnesses required for his defense.

29. On December 10, 1992, Respondent sent by express mail his first 23 subpoenas for deposition and trial.

30. Notices of Taking Deposition were filed and served for each subpoena along with Notices of Taking Deposition for

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[2]Respondent has noticed that an error was made in this letter. Obviously, since the letter is dated November 23, 1992, Respondent intended to state that he would have to begin subpoenaing witnesses during the first week of December as opposed to the first week in November.

each Commissioner of the Florida Judicial Qualifications Commission.

31. By letter dated December 11, 1992, but received on December 14, 1992, General

Counsel for the Commission advised that he was refusing to execute the subpoenas.

32. By letter dated and faxed December 15, 1992, but received on December 16, 1992, Special Counsel for the Commission advised the Respondent that he was drafting a Motion for Protective Order involving 37 of the Notices of Taking Deposition.

33. On DEcember 16, 1992, at a time when the Respondent Judge sorely needed to be preparing for trial, he instead was required to spend all day researching and drafting a second Petition for Constitutional Writs requesting the Florida Supreme Court to order General Counsel to perform his ministerial duties of executing subpoenas.

34. Late in the afternoon of December 16, 1992, Mr. Bostic, Special Counsel for the Commission, informed the Respondent Judge that he had changed his mind and was not objecting to the depositions scheduled

for December 21 and 22, 1992, thus obviating the need for the Petition for Constitutional Writs which Respondent Judge had prepared.

35. The conduct of General and Special Counsel thus wasted the time and resources of the Respondent Judge in the

preparation of his defense and made problematical whether or not the 22 executed subpoenas which were received midday December 17 could be served in the one and one-half working days remaining before December 21, 1992.

36. That the Commission's intention to challenge the subpoenas was printed in the local news media making it public knowledge that subpoenas would be attempted to be served.

37. That on the afternoon of December 17, 1992, when process servers attempted to serve at her place of business a

deposition subpoena on Ms. Johnnye Friedrich, Attorney at Law, and a critical witness in the case, that she refused to come out of her office to meet with the process server or to accept the subpoena.

38. That Respondent Judge anticipates that similar attempts to avoid service of subpoena will now be encountered due to the conduct of General and Special Counsel in delaying and obstructing their issuance and publicizing their existence.

39. That in the Commission's Response to Motion to Dismiss Special Counsel alleged that the Motion to Dismiss contained false statements.

40. That Respondent Judge contacted Special Counsel and offered to correct any false statements if he would identify them.

41. That Special Counsel agreed to identify the alleged false statements.

42. That Special Counsel by letter dated November 19, 1992, reneged on his promise to provide the list.

43. That Special Counsel by the same letter refused to provide a copy of letters supporting the Respondent Judge received by the JQC subsequent to its filing of formal charges.

44. That Special Counsel refused to provide copies of formal charges against other judges which charges have not been retained in the files of the Florida Supreme Court or the Florida State Archives.

45. That the Special Counsel's unreasonable refusal to share voluntarily these discoverable materials has greatly added to the discovery needs of the Respondent Judge and to the number of depositions needed to be taken.

46. That the General Counsel has refused to execute subpoenas directed to

Special Counsel Bostic and Schumacher which were intended among other things to obtain the above-stated information.

47. By letter dated December 2, 1992, and delivered by express mail, Respondent Judge requested discovery pursuant to FJQCR 12. Special Counsel by letter dated December 7, 1992, promised delivery of this information by december 14,

1992. As of December 18, 1992, Special Counsel has failed to comply with this discovery demand.

48. The Respondent Judge has contemporaneously filed on December 18, 1992, his Answer, Counterclaim, and Demand for Jury Trial.

49. The pleadings are not yet closed in this case.

50. The Respondent Judge is not now nor will he be able to be prepared to present

a good and adequate defense by January 26, 1993.

RELIEF REQUESTED

That this cause be continued until April 27, 1993.

ARGUMENT IN SUPPORT OF RELIEF REQUESTED

Special Counsel for the Commission has apparently had months to investigate and prepare for the filing of charges. It is also apparent that he and his special assistant have spent hundreds of man hours interrogating witnesses.

However, rather than waiting until completely satisfied with which charges were appropriate, he chose to first dribble out 8 charges and then add 23 before the Respondent could even respond to the 8 and then dribble out 14 more before the Respondent could answer to the first 31.

General Counsel then set a hearing date before the pleadings were closed.

As a result, the Respondent's time has been dominated by constant requirements to research and prepare repeated and multiple motions and pleadings to two separate and parallel proceedings and travel to remote cities for Rule 6(b) hearings. Accordingly, the Respondent, besieged by the Commission and pressed to obtain documents related to 45 charges of misconduct, some of which relate back to events five years in the past and many of which required the difficult transcription of electronically recorded proceedings, was unable to begin discovery until 60 days prior to the hearing which as of yet the Florida Supreme Court has declined to continue.

The JQC, by refusing its clear ministerial duty to execute subpoenas, then delayed and obstructed the Respondent Judge for yet another three days.

The extent and complexity of the proceedings in this case has made it impossible for the Respondent Judge to be prepared by January 26, 1993.

CONCLUSION

Due process of law requires that a litigant be afforded a reasonable opportunity to prepare and defend himself. If the Respondent Judge is required to go to hearing on January 26, 1993, his due process rights as protected by both the

State and Federal Constitutution will be violated. The Respondent Judge will rely on the Commission to make a fair and just determination.

Respectfully submitted,

/s/HONORABLE GARY GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq.,
Room 215
Inverness, FL 34450
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by hand delivery to Clerk of The Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy has been furnished by United States Express Mail to Mr. Roy T. Rhodes, Attorney for Florida Judical Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000, and Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 18th day of December, 1992.

/s/JOETTE M. UZAR
Judicial Assistant

DOCUMENT 40

Motion for Continuance
dated January 13, 1993

BEFORE THE FLORIDA JUDICIAL QUALIFICATION COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91-415
HONORABLE GARY G. GRAHAM
CITRUS COUNTY COURT JUDGE
_____/

SUPREME COURT NO 80,273

MOTION FOR CONTINUANCE

Comes now the Honorable Gary G. Graham, Citrus County Court Judge, Respondent Judge in the abovestyled cause, and makes this his Motion for Continuance.

FACTS

1. The Respondent Judge received an initial Notice of Investigation on April 28, 1992. He was "invited" to appear before the Florida Judicial Qualifications Commission on May 18, 1992, to explain eight charges of misconduct, on May 18, 1992,

to explain eight charges of misconduct, giving Respondent just three weeks to prepare for the meeting. Some of these charges related back to incidents some **three** years in the past and required research into Court files and the difficult transcription of electronic court reporting tapes. Respondent was expected to do this while carrrying on all of his full-time duties as the sole County Court Judge for Citrus County.

2. Attorney Richard Earle, Jr., on behalf of the Respondent, in a special limited appearance, requested a continuance from Attorney Roy Ryhodes, Counsel for the Florida Judicial Qualifications Commission. Mr. Earle, a former Chairman of the Florida Judicial Qualifications

Commission, had advised Respondent that such motions were routinely granted. The

Florida Judicial Qualifications Commission denied the motion.

3. The Florida Judicial Qualifications Commission during the proceedings has expanded the number of charges to 43. A prior motion to continue the hearing date of January 26, 1993, was nonetheless denied by the Florida Judicial Qualifications Commission. As a result, the Respondent's time has been dominated by constant requirements to research and prepare repeated and multiple motions and pleadings to two separate and parallel proceedings and travel to remote cities for Rule 6(b) hearings. Accordingly, the Respondent, besieged by the Florida Judicial Qualifications Commission and pressed to obtain documents related to 43 charges of misconduct, some of which relate back to events five years in the past and many of which required the

difficult transscription of electronically recorded proceedings, was unable to being discovery until 60 days prior to the hearing.

4. On the 7th of January, 1993, Respondent appeared, pursuant to notice by the Florida Judicial Qualifications Commission, for the purpose of being deposed. Attorney Joseph F. McDermott appeared by special appearance to represent him and, in the course of proceeding, invoked the constitutional privilege of remaining silent on the grounds that answers to certain questions propounded would require

him to become a witness against himself in violation of the 5th and 14th Amendments to the Constitution.

Until the threat of criminal prosecution is eliminated, the Respondent cannot testify in his own behalf and therefore will be

unable to defend against the charges. Unless a continuance is granted until the threat of criminal prosecution is gone, the Respondent will be unconstitutionally penalized for exercising his constitutional right to remain silent under the Fifth Amendment to the Constitution of the United States and Section 9 of Article 1 of the Constitution of the State of Florida.

A similar procedure was ordered employed in Wehling v. Columbia Broadcasting System, 608 F.2d 1084 (5th Cir. 1979), where a plaintiff suing a broadcaster for libel invoked his right to remain silent at his deposition. His suit was dismissed for his refusal to submit to discovery and he appealed.

The Court of Appeals reversed and ordered the proceedings stayed until the

statute of limitations had run on the possible criminal prosecutions. This is the procedure the Respondent requested be employed here.

5. Beyond that ground, Respondent is advised that the court reporter on the depositions taken cannot possibly have them transcribed by the time presently set for the final

hearing on the 26th of January, 1993. At the very least, a continuance should be granted until the discovery is fully available.

In that regard, as late as Wednesday, January 6, 1993, Special Counsel, Mr. Bostic, produced 7 or 8 un-transcribed audio tapes of 14 proceedings along with 10 other documents to be assessed by Respondent. As late as Tuesday, January 12, 1993, Mr.

Bostic produced 2 additional un-transcribed audio tapes of yet numerous other proceedings. Apparently there is still more to come.

6. Additionally, the Respondent has depositions of numerous critical and essential witnesses scheduled for almost every working day and Saturdays between now and the proposed hearing date. Thus he will have no time available for actual trial preparation.

7. Furthermore, during the recent depositions of Joe Brannen and William F. Swigert the Respondent discovered information directly related to his defense substantiating his claim that certain favoritism existed in the court system. Respondent needs additional time to investigate and obtain evidence of these incidents.

8. On January 12, 1993, Ms. Angela Miller, a witness listed by the Florida Judicial Qualifications Commission, failed to appear for her deposition without justification and after lawful service of a subpoena on her. Respondent needs

time to file appropriate motions to compel her compliance. Because of the Respondent's fully scheduled calendar it will be impossible for him to depose this witness until after the scheduled hearing date.

Numerous other dependents have refused to answer questions during their depositions, also requiring further motion practice in order to bring them into compliance with discovery.

9. Finally, at the end of each of the general formal charges appears the following language: "This allegation

includes, but may not be limited to, the following:" (Emphasis supplied.) Until Respondent can ascertain each incident claimed to support the charges, Respondent cannot possibly be prepared for trial.

CONCLUSION

Due process of law requires the Respondent be given time to prepare to meet the charges in order to have a fair trial.

Respectfully submitted,

/s/HONORABLE GARY GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq.,
Room 215
Inverness, FL 34450-4802
(904) 637-9960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by fax and United States Express Mail to Clerk

of the Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 323991925, and a true copy has been furnished by fax and United States Express Mail to Mr. Roy T. Rhodes, Attorney for Florida Judicial Qualifications

Commission, Room 102, The Historic Caitol, Tallahassee, FL 32399-6000, and Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, 220 S. Franklin St., Tampa, FL 33602, this 13th day of January, 1993.

/s/JOETTE M. UZAR
Judicial Assistant

A 971.5

DOCUMENT 41

Resume of Judge Graham

RESUME

Gary G. Graham
P.O. Box 519
Inverness, Florida 32651

Personal Data

Birthdate: January 27, 1948
Resident of Central Florida since 1960

Education

L.L.M. Business and Taxation May, 1981,
McGeorge School of Law,
University of Pacific, Sacramento,
California

J.D. June, 1980, Holland Law Center,
University of Florida
Gainesville, Florida
Honors: Deans List 4 quarters
Graduated "With Honors"

M.B.A. June, 1976, University of South
Florida
Tampa, Florida

B.S.E.E. August, 1971, University of
Florida
Gainesville, Florida

Legal Experience

Private Practice of Law
Inverness, Florida

1984 to present

Legal duties include the general practice of law. Experience in misdemeanors, felonies, divorce, wills, name changes, and civil suits. Appeals to the Second and Fifth Judicial Circuit, to the Florida Supreme Court and two appeals to the United States Supreme Court.

Office of the Public Defender
Thirteenth Judicial Circuit, Tampa, Florida
1982-1983 Assistant Public Defender

Legal duties include the defense of over four hundred indigent persons in Juvenile, Misdemeanor, Civil Committment, and Felony proceedings. Work also included extensive appellate practice, including four successful appeals to the Second District Court of Appeals.

Peirsol, Burroughs, Grimm & Bennett, P.A., Orlando, Florida 1981
Associate Attorney

Legal duties included the drafting of private placement memorandums and associated documents, researching legal issues, and advising clients in the requirements of the Federal and State securities and tax laws.

Other Experience

General Telephone Company of Florida, Tampa, Florida
1973-1978 Radio and Carrier Engineer

The Boeing Company, Cape Canaveral, Florida
1972 Test Engineer

In addition to my professional experience, I have held part-time and summer employment as an electrician, truck driver, cook, tobacco picker, carpenter, laborer, baseball park attendant, janitor, dredge hand, and survey crewman.

Courts

Admitted to practice before the United States Supreme Court, the United States Tax Court, the United States District Court, Middle District of Florida, The United States Court of Appeals, Eleventh Circuit, and all Florida Courts.

Community Activity

Volunteer with the State of Florida Department of Health and Rehabilitative Services
1973-1976, 4-16 hours per week

Professional License

State of Florida Professional Engineering License #24430 Granted December, 1978

State of Florida Real Estate Salesman License #329757 Granted January, 1980

Associations

Florida Bar Association, Admitted October, 1980

Institute of Electrical and Electronic Engineers, Senior Member, Admitted March, 1982

Kiwanis International, 1984

Significant Test Results

L.S.A.T. 704

A 975.5

DOCUMENT 42

Excerpts for Transcript of
Proceedings before the JQC
May 18, 1992 (First Rule 6b Hearing)

MEETING OF THE

JUDICIAL QUALIFICATIONS COMMISSION

Monday, May 18, 1992

3:50 p.m. - 4:40 p.m.

APPEARANCES:

Judge Gary G. Graham
Judge J. Klein, Chairman
Roy T. Rhodes, Esquire, General Counsel
Brooke S. Kennerly, Executive Director
Rutledge R. Liles, Esquire
Sybil H. Barnes
Judge Miette K. Burnstein
Judge Frank N. Kaney
Stanley G. Tate
Judge Richard Frank
Nancy N. Mahon
Seth Dennis
Judge Thomas B. Freeman
Judge Marvin H. Gillman
Joseph J. Reiter, Esquire
Harry L. Coe, Jr.

Meagher & Johnson Registered Professional Reporters
(407) 820-9066

(Discussion held off the record.)

JUDGE WIGGINTON: Judge, we have reconsidered or considered the denial of the continuance. We discussed this and debated it, because there are other things in the mill that need to be explained also. You'll come to know about those.

We then thought to expedite, and to save your time and energy and efforts of two sets of situations, would be to clarify for you what those situations are, and then while you're doing your work for one, look into the other, because it would be virtually I suppose part of the same thing anyway.

This would be continued until the time certain that we have for our normal meetings in the next several months, but they will try to do so that you have time to get your material together.

So you're -- so excuse me. Frank,

could you read the -- there's several dates that will

involve Judge Graham.

JUDGE KANEY: July 31st at 9:00.

JUDGE WIGGINTON: July 31st at 9:00 a.m.

MR. TATE: In Tampa.

JUDGE WIGGINTON: When your 6-B hearing would be held in Tampa on the 31st.

JUDGE GRAHAM: And you want to see me then?

JUDGE WIGGINTON: Informal notice. Notice of General Counsel, we'll be giving you that. We'll be getting that in the mail.

JUDGE GRAHAM: I'll work as hard as I can to finish getting this information to you.

JUDGE WIGGINTON: Yes, and we'll get it back together for you, those that you

gave out, so that you'll have --

MR. TATE: He didn't give anything out.

JUDGE WIGGINTON: Okay. It was brought to my attention that in order to really clarify it -- and we appreciate your making the statement you'll work as hard as you can -- let me emphasize that that is the time that we will have a 6-B hearing for you, Judge. So be prepared and have

it all, and so that we, too, must be prepared and exchange these ideas.

JUDGE GRAHAM: Now, there's only one thing I don't understand. You said you had to see about other proceedings or something?

JUDGE WIGGINTON: I said there may be other matters that are looked into also, because we often find in our investigations that you go to first base and something

kind of clicks and says, well, let me look around second base, too, just to be sure.

So there may be things like that that can happen in any of these type of fact-finding situations.

JUDGE GRAHAM: Well, you understand that when it comes to first base, I can help you folks and prepare for it. When you come to second base, I don't know anything about second base, so I'll do my best.

JUDGE WIGGINTON: Okay

JUDGE GRAHAM: But I won't be able to be prepared. Is that fair enough?

JUDGE WIGGINTON: You won't be able to be prepared?

JUDGE GRAHAM: For second base.

JUDGE BURNSTEIN: We'll see you the 31st.

JUDGE GILLMAN: Judge Graham -- do

you want to clarify it, Judge?

JUDGE WIGGINTON: I want it to be clear.

JUDGE GILLMAN: There are some other matters that are under investigation by the Commission other than these eight items that were noticed for today.

JUDGE GRAHAM: Okay.

JUDGE GILLMAN: They have not been brought before the Commission yet for consideration. They may be brought before us at a time prior to this July 31st date, and if they are, there will be notice given to you in regard to them.

I'm not saying that they're -- what they are. I don't even know what they are myself. They haven't been brought to us, but there's an indication that there may be some other matters.

If there are, you will be notified in sufficient time to be prepared for that July 31st date.

And that was one of the considerations, so that you will know, that you motion was granted,

your request was granted today.

We don't want to visit Judge Graham's problems or any allegations against Judge Graham more than one time. We want to get together and get the matter behind everybody once and for all at some particular time in the near future.

JUDGE WIGGINTON: Do you understand now?

JUDGE GRAHAM: Yes, sir, I think I understand that there have been other charges between -- which we may talk about on July 31st.

JUDGE WIGGINTON: Right. Thank you so much for coming, and hopefully we have resolved the matter for you.

JUDGE GRAHAM: May I be excused?

JUDGE WIGGINTON: yes.

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(Thereupon, at 4:40 p.m., the hearing was concluded)

DOCUMENT 43

Motion for Continuance
dated February 10, 1993

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 91-415 HONORABLE GARY G. GRAHAM CITRUS COUNTY COURT JUDGE	SUPREME COURT NO 80,273

_____/

MOTION FOR CONTINUANCE

Comes now Honorable Gary G. Graham, County Court Judge of Citrus County, Florida, and moves for an Order from the Florida Judicial Qualifications Commission upon the following grounds:

1. The ground set out in the prior motions for continuance are adopted here.

2. That as a further ground Respondent Judge states that the transcriptions of the depositions taken in this cause are critical to his defense, that they have not been completed, and that they are

unlikely to be completed by February 23, 1993.

3. As a further ground, the Respondent Judge states that a continuance is vital and necessary for Respondent to establish his defense of selective prosecution.

4. The defense of selective prosecution arises directly from the Fifth Amendment to the Constitution of the United States and is applied to the States through the Fourteenth Amendment to the Constitution.

5. U.S. v. Aguilar, 871 F.2d 1436 (9th Cir. 1989), was a case involving charges against a "sanctuary" group for violations of the immigration laws in which the defendants

attempted to raise the defense of selective prosecution.

The trial court's rejection of the

defense was affirmed by the court of appeals which dealt with the question as follows:

> "To establish impermissible selective prosecution, a defendant must show that others similarly situated have not been prosecuted and that the prosecution is based on an impermissible motive." United States v. Lee, 786 F.2d 951 (9th Cir. 1986), Claims of selective prosecution are to be judged under ordinary equal protection standards. Wayte v. United States, 470 U.S. 598, 608, 105 S.Ct. 1524, 1531, 84 L.Ed.2d 547 (1985).
>
> * * *
>
> "The goal of identifying a similarly situated classof law breakers is to isolate the factor allegedly subject to impermissible discrimination. The similarly situated group is the control group. The control group and defendant are the same n all relevant aspects, except that defendant was, for instance, exercising his first amendment rights. If all other things are equal, the prosecution of only those persons exercising their constitutional rights gives rise to an inference of discrimination. But where the comparison group has less in common with defendant, then factors other than the protected expression may very well play a part in the prosecution." (Emphasis supplied.)

6. The "control group" in this case constitutes all judges in the State of

Florida subject to prosecution by the Florida Judicial Qualifications Commission.

7. Proof that others similarly situated were not prosecuted is a matter of compiling probative data that such is the case. The few cases in this are indicate a not so surprising effort on the part of the prosecuting authority to thwart the gathering of necessary data.

8. In U.S. v. Steel, 461 F.2d 1148 (9th Cir. 1972), the defendant was indicted and convicted for refusal to answer questions on a census form. He claimed his prosecution was selective because he had participated vocally in a census resistance movement. In response to Steele's motion for particulars asking how many others in Hawaii had committed the same offense, the government responded that such information

was not available. Steele found six others who had refused to complete the census form, who had not publicly expresed resistance to the census, and who were not prosecuted.

The Court of Appeals reversed the conviction, noting that the government offered no explanation other than it was exercising prosecutorial discretion.

9. A showing of improper motive is not completely clear but in Attorney General of the U.S. v. Irish People, Inc., 684 F.2d 928 (D.C. Cir. 1982), the court ventured a definition as follows:

> "There is some confusion in the case law -- and the district court's opinion -over what constitutes 'improper motivation.' Two kinds of motives are apparently impermissible: those which have no rational basis under the statutory scheme being enforce,and those which are in and of themselves violative of the Constitution."

10. The first effort, procedurally, must be to get discovery. In U.S. v. Kerley,

787 F.2d 1147 (7th Cir. 1986), a refusal to register for the draft case, the Court of Appeals noted:

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> "It is true that a motion to compel discovery in a selective prosecution case does not stand on quite the same footing as a motion to dismiss the indictment. The denfendant need not make a 'complete prima facie case' as he must when the motion is aimed at securing an evidentiary hearing on the merits of his claim for selective prosecution; rather, he need only show a 'colorable basis' for the claim."

11. The selective prosecution defense was recognized in the State of Florida in State v. Parrish, 567 So.2d 461 (Fla. 1DCA 1990), where the defense was upheld by the trial court in a criminal prosecution and affirmed by the Court of Appeal.

12. The Respondent Judge has made a prima facie case of selective prosecution during the depositions of Judge Woodrow Beachamp, Judge William Swigert, and for

Judge Harry Lee Coe. During these depositions:

a. Judge Beauchamp admitted to clear violations of the Code of Judicial Conduct in that he stated that he has performed numerous weddings at the Courthouse during working hours and accepted compensation for his services. He has not been prosecuted by the Florida Judicial Qualifications Commission.

b. Judge Swigert stated that certain conduct described to him was clearly unethical, proved a judge was unfit, and bordered on criminal conduct. Unknown to him the conduct was that which had been engaged in by Judges John Thurman and William F. Edwards. Thurman and Edwards have not been prosecuted by the Florida Judicial Qualifications Commission.

c. Former Judge Coe stated that certain conduct described to him was clearly unethical. Unknown to him the conduct which was complained of had been engaged in by Judges John Ghurman and William F. Edwards. Thurman and Edwards have not been prosecuted by the Florida Judicial Qualifications Commission.

13. In order to present this defense (previously raised by Respondent in these proceedings), 120 days of discovery will be needed in order that Respondent have his constitutionally protected right to a fair trial.

14. Respondent Judge requests notice of the hearing of this motion before the Motion Committee and requests to be present to argue the facts and merits of the motion.

Respondent Judge further requests the

Florida Judicial Qualifications Commission notify him of the Commission's agenda to review the Motion Committee's disposition of this motion. Respondent Judge reminds the Commission that after the filing of formal charges Rule 24, Florida Judicial Qualifications Rules, provides that "all further proceedings before the Commission shall be public". This Rule applieds to Rule 9(b) reviews of Motion Committee dispositions.

The Respondent Judge further requests that this review be heard at a public hearing in his presence and not by quorum but by the full Commission as it appears that the Florida Constitution in establishing the membership of the Commission contemplated all action be ruled upon by the

entire Commission in order that a respondent

judge receive the full protection of the diversity of membership.

Respectfully submited,

/s/HONORABLE GARY G. GRAHAM
County Court Judge
Citrus County, Florida
One Courthouse Sq.,
Room 215
Inverness, FL 34450-4802

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been furnished by United States Mail to Clerk of the Supreme Court of Florida, Supreme Court Building, 500 S. Duval St., Tallahassee, FL 32399-1925, and a true copy by United States Express Mail to Mr. Ford L. Thompson, General Counsel for Florida Judicial Qualifications Commission, Room 102, The Historic Capitol, Tallahassee, FL 32399-6000, and by United States Mail to Mr. Terrance A. Bostic, Special Counsel to the Florida Judicial Qualifications Commission, P.O. Box 3401, Tampa, FL 33601-3401, this 10th day of February, 1993.

/s/JOETTE M. UZAR
Judicial Assistant